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ON PORNOGRAPHY

Pornography vs. Democracy —A Case for Censorship
Walter Berns

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CONTENTS

On Pornography
I. Pornography vs. Democracy: The Case for Censorship — *Walter Berns* — 3

II. Concurring and Dissenting Opinions — *Alexander Bickel, Stanley Kauffmann, Wilson Carey McWilliams, Marshall Cohen* — 25

III. Violence, Pornography, and Social Science — *James Q. Wilson* — 45

Paradoxes of Health Care — *Nathan Glazer* — 62

The *Mafia* and the Web of Kinship — *Francis A. J. Ianni* — 78

On "Capitalism" and the "Free Society" — *John K. Jessup and Irving Kristol* — 101

Reassuring the Small Homeowner — *Adam Yarmolinsky* — 106

Current Reading — 111

Contributors — 77

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Pornography vs. democracy: the case for censorship

WALTER BERNS

THE case against censorship is very old and very familiar. Almost anyone can formulate it without difficulty. One has merely to set the venerable Milton's *Areopagitica* in modern prose, using modern spelling, punctuation, and examples. This is essentially what the civil libertarians did in their successful struggle, during the past century, with the censors. The unenlightened holder of the bishop's imprimatur, Milton's "unleasur'd licencer" who has never known "the labour of book-writing," became the ignorant policeman or the bigoted school board member who is offended by "Mrs. Warren's Profession," or the benighted librarian who refuses to shelf *The Scarlet Letter*, or the insensitive customs official who seizes *Ulysses* in the name of an outrageous law, or the Comstockian vigilante who glues together the pages of every copy of *A Farewell to Arms* she can find in the bookstore. The industrious learned Milton, insulted by being asked to "appear in Print like a punie with his guardian and his censors hand on the back of his title to be his bayle and surety," was replaced by Shaw, Hawthorne, Joyce, or Hemingway, and those who followed in their wake, all victims of the mean-spirited and narrow-minded officials who were

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appointed, or in some cases took it upon themselves, to judge what others should read, or at least not read. The presumed advantage of truth when it grapples with falsehood became the inevitable victory of "enduring ideas" in the free competition of the market. With these updated versions of old and familiar arguments, the civil libertarians have prevailed.

They prevailed partly because of the absurdity of some of their opposition, and also because of a difficulty inherent in the task their opponents set for themselves. The censors would proscribe the obscene, and even assuming, as our law did, that obscene speech is no part of the speech protected by the First Amendment to the Constitution, it is not easy to formulate a rule of law that distinguishes the non-obscene from the obscene. Is it the presence of four-letter words? But many a literary masterpiece contains four-letter words. Detailed descriptions of sexual acts? James Joyce provides these. Words tending to corrupt those into whose hands they are likely to fall? But who is to say what corrupts or, for that matter, whether anything corrupts or, again, what is meant by corruption? Is it an appeal to a "prurient interest" or is it a work that is "patently offensive"? If that is what is meant by the obscene, many a "socially important work," many a book, play, or film with "redeeming social value," would be lost to us. The college professors said so, and if college professors do not know the socially important, who does? Be that as it may, they succeeded in convincing the Supreme Court, and the result was the complete rout of the "forces of reaction." To the college professors, therefore, as well as to the "courageous" publishers and the "public-spirited" attorneys who had selflessly fought the cases through the courts, a debt of gratitude is owed by the lovers of Shaw, Hawthorne, Joyce and Hemingway—and others too numerous to detail here. In the same spirit one might say that never has there been such a flourishing of the arts in this country.

Astonishingly, the editors of the *New York Times* disagree, and in an editorial printed on April 1, 1969, under the heading "Beyond the (Garbage) Pale," they expressed their disagreement in language that we have been accustomed to read only in the journals of the "reactionary right."

> The explicit portrayal on the stage of sexual intercourse is the final step in the erosion of taste and subtlety in the theater. It reduces actors to mere exhibitionists, turns audiences into voyeurs and debases sexual relationships almost to the level of prostitution.
>
> It is difficult to see any great principle of civil liberties involved when

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persons indulging themselves on-stage in this kind of peep-show activity are arrested for "public lewdness and obscenity"—as were the actors and staff of a recently opened New York production that, in displaying sodomy and other sexual aberrations, reached the *reductio ad obscenum* of the theatrical art. While there may be no difference in principle between pornography on the stage, on the screen and on the printed page, there is a difference in immediacy and in direct visual impact when it is carried out by live actors before a (presumably) live audience.

The fact that the legally enforceable standards of public decency have been interpreted away by the courts almost to the point of no return does not absolve artists, producers or publishers from all responsibility or restraint in pandering to the lowest possible public taste in quest of the largest possible monetary reward. Nor does the fact that a play, film, article or book attacks the so-called "establishment," revels in gutter language or drools over every known or unknown form of erotica justify the suspension of sophisticated critical judgment.

Yet this does seem to be just what has been suspended in the case of many recent works, viz. one current best-seller hailed as a "masterpiece," which, wallowing in a self-indulgent public psychoanalysis, drowns its literary merits in revolting excesses of masturbation and copulation.

The utter degradation of taste in pursuit of the dollar is perhaps best observed in films, both domestic and foreign such as one of the more notorious Swedish imports, refreshingly described by one reviewer unafraid of being called a "square" as "pseudo-pornography at its ugliest and least titillating and pseudo-sociology at its lowest point of technical ineptitude."

Far from providing a measure of cultural emancipation, such descents into degeneracy represent caricatures of art, deserving no exemption from the laws of common decency merely because they masquerade as drama or literature. It is preposterous to banish topless waitresses when there is no bottom to voyeurism on the stage or in the movie houses.

In the end, however, there may be an even more effective answer. The insensate pursuit of the urge to shock, carried from one excess to a more abysmal one, is bound to achieve its own antidote in total boredom. When there is no lower depth to descend to, ennui will erase the problem.

This must be reckoned an astonishing statement because in the liberal world for which the *Times* speaks it has not been customary —to put it mildly—to cast any doubt on the wisdom of an anti-censorship policy. Now suddenly, the *Times*, contrary to what its readers might expect of it and contrary even to the general tenor of its own drama and literary pages, registers its misgivings. This is not what they wanted to happen. In their struggle against the censor they did not mean to defend "the explicit portrayal of sexual intercourse" on the stage or in films; they did not have in mind "sodomy and other sexual aberrations." They intended to protect the freedom of the arts from bigoted censors; they were defending *Ulysses* when the customs laws would have excluded it from the

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country, and sensitive foreign films, such as "Les Amants," from Ohio's laws; but they certainly did not intend to establish a place for "revolting excesses of masturbation and copulation."

A truly invisible hand

Nine months later one of the country's principal foes of censorship checked in with the same disclaimer. *Ulysses,* yes, said Morris Ernst, but "sodomy on the stage or masturbation in the public area," no! Although it never appeared to figure with any prominence, or figure at all for that matter, in the arguments that had made him one of the foremost civil liberties lawyers in the country, Ernst now insists that he had always made it clear that he "would hate to live in a world with utter freedom." He deeply resents "the idea that the lowest common denominator, the most tawdry magazine, pandering for profit . . . should be able to compete in the marketplace with no restraints." The free marketplace has become the dirty marketplace, and Ernst wants no part in it and no responsibility for it.[1]

But surely this was inevitable? Pornography and the taste for it are not new phenomena. What is new is the fact that it can display itself openly in the marketplace, so to speak, whereas in the past it had been confined by the laws to the back alleys, or to the underworld, where its sales were limited not by a weakness of the potential demand but rather by the comparative inaccessibility of the market. Prodded by the civil libertarians, the Supreme Court made pornography a growth industry by giving it a license to operate in the accessible and legitimate market, thereby bringing buyer and seller together. True, the Court did not directly license "Oh! Calcutta!" or "Che!"; but so long as the Court is consistent, these works are certain to benefit from the licenses given "Les Amants" and *Fanny Hill* and the others. Consider the state of the law developed on their behalf. So long as a work is not "*utterly* without redeeming social value" (and the emphasis is the Supreme Court's), it cannot be proscribed even if it is "patently offensive" and is found

[1] *New York Times,* January 5, 1970, p. 32. Whatever Ernst now says he used to say, or meant all along, what we remember from him is on the printed page, and there he said that "censorship of the theater is truly an anomaly"; and there he scoffed at the idea that a book, any book, could be "corrupting (whatever that may mean)"; and there he insisted that censorship could be justified only if it could be demonstrated that a "causal relationship" existed "between word or picture and human behavior," and that such a relationship had never been demonstrated "in the field of obscenity!" In fact, he added, "the indications seem to be to the contrary." Morris L. Ernst and Alan U. Schwartz, *Censorship: The Search for the Obscene* (New York: Macmillan, 1964), pp. 142, 200, 250-251.

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by a jury to appeal to a "prurient interest." All that is needed to save any work from the censor, or the police, is some college professor willing to testify as to its "social value" or "social importance," and there is no shortage of such professors with such testimony. Indeed, the work has not been written, staged, or filmed that cannot find its champions among the professors.[2]

It was not supposed to turn out this way. Some invisible and benign hand was supposed to operate in this market too, and guarantee the triumph of the true and the beautiful. People, said Justice William O. Douglas in one of the obscenity cases only a couple of years ago, "are mature enough to pick and choose, to recognize trash when they see it, to be attracted to the literature that satisfies their deepest need, and . . . to move from plateau to plateau and finally reach the world of enduring ideas." This is the liberal faith. The *Times* shared it, and it is worth noting that even in its distress it refuses to foresake it altogether. The editors express their disgust with what has happened, but they must know that this will be unavailing with those who are themselves disgusting. Certainly the "artists, producers [and] publishers . . . pandering to the lowest public taste in quest of the largest possible monetary reward" are not going to forego this reward simply because some fainthearted libertarians, even on the *Times*, look upon their work as disgusting. "I paid to see filth and I want filth," said the woman from Connecticut by way of protesting a showing of an expurgated "I Am Curious (Yellow)." She paid to see filth and, no matter what the *Times* says, there will always be "artists, producers [and] publishers" to see to it that she gets her money's worth. That is why there used to be laws against filth—because the legislators who wrote these laws knew full well the fruitlessness of relying on admonition or expressions of disgust. The *Times* does not call for the refurbish-

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[2] "LONG BEACH, CALIF. JAN. 13 [1970] (AP)—Four nude models—two male, two female—postured before the coeducational sociology class of 250 persons.

"On movie screens, lesbian and heterosexual couples went through acts of lovemaking.

"Sound systems blared recordings by the Beatles and from the rock musical 'Hair.'

"Two hours after the class ended yesterday, California State College suspended its teachers, Marion Steele, 31 years old, and Dr. Donald Robertson, 29, for thirty days without pay. Further action was threatened.

"Mr. Steele and Dr. Robertson said they had staged the show to ridicule what they called America's prudishness about sex as contrasted with its toleration of what they considered such 'glaring obscenities' as the Vietnam War, violence on television and pollution of air and water.

" 'This produces hangups and keeps millions from enjoying genuine sexual pleasure and makes our entire world obscene,' Dr. Robertson told the class." *New York Times*, January 14, 1970, p. 11.

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ment of these laws, but appeals instead to the "laws of common decency," as if these so-called laws had not passed into desuetude with the demise of the legislation that constituted their foundation. So it is that, in the end, it returns to the old liberal faith in an invisible hand that will provide our salvation: "When there is no lower depth to descend to, ennui will erase the problem."

Such a conclusion is pitifully inadequate, but it is an accurate reflection of the thinking that has been done on this issue during our time. Neither the *Times* nor Morris Ernst has a grasp of the principle with which—or even a suitable vocabulary in which—to challenge the powerful orthodoxy that has long governed the public discussion of censorship and the arts. To be a liberal is to be against censorship or it is to be nothing—or so it has been thought —and after a career spent arguing against censorship, it is not easy to formulate an argument in its favor. But the *Times* and Mr. Ernst deserve our gratitude nevertheless, for, although they leave it undefined, their disclaimers do have the merit of acknowledging that there is something wrong with things as they are, that there *is* a problem. The respectability attached to their names makes it easier to reexamine this problem.

II

Just as it is no simple task to formulate a rule of law that distinguishes the non-obscene from the obscene, it is still more difficult to distinguish the obscene from the work of genuine literary merit. In fact, it is impossible—and our failure to understand this may be said to be a condition, if not a cause, of our present situation. Our laws proscribe obscenity as such and by name, and we are unwilling to admit that great literary and dramatic works can be, and frequently are, obscene. In combination these two facts explain how it came about that we now have, with the sanction of the law, what is probably the most vulgar theatre and literature in history. The paradox is readily explained. The various statutes making up the law have made obscenity a criminal thing, and our judges assume that if a work of art is really a work of art, and not vulgar rubbish, it cannot be obscene. Thus, Judge Woolsey, in his celebrated opinion in the *Ulysses* case, recounts how he had asked two literary friends whether the book was obscene within the legal definition, which he had explained to them, and how they had both agreed with him that it was not. But of course *Ulysses* is obscene. Not so obscene as an undoubted masterpiece, Aristophanes' "Assembly of Women,"

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for example, which would not be a masterpiece—which would not be anything—were its obscenity removed, but obscene nevertheless.

The trouble stems from the fact that the Tariff Act of 1930 would exclude "obscene" books from the country, and Judge Woolsey, being a sensible man, did not want this to happen to *Ulysses*. So he fashioned a rule to protect it. But the same rule of law protects *The Tropic of Cancer*, because according to the rule's necessarily clumsy categories, the latter is no more obscene than the former, however it compares on another scale and whatever the aesthetic distances separating its author, Henry Miller, and James Joyce as writers. Eventually, and for the same reason, the protection of the law was extended to *Trim*, *MANual*, and *Grecian Guild Pictorial*, the homosexual magazines involved in a case before the Supreme Court in 1962, and then to *Fanny Hill*. At this point, if one ignores the Ginzburg aberration and the recent children's cases,[3] the censors seem to have given up, and we have—well, anything that anyone will pay to see or read. Thus, having begun by exempting the work of art from the censorship laws, we have effectively arrived at the civil libertarian's destination: the case where the Supreme Court throws in its hand and concludes that there is no such thing as obscenity.

Underlying this unfortunate development is the familiar liberal idea of progress. Rather than attempt to inhibit artists and scientists, the good polity will grant them complete freedom of expression and of inquiry, and will benefit collectively by so doing. What is good for the arts and sciences is good for the polity: this proposition has gone largely unquestioned among us for 200 years now. The case for censorship rests on its denial, and can be made only by separately examining its parts. What is good for the arts and sciences? What is good for the polity? The case for censorship arises initially out of a consideration of the second question.

The case for censorship is at least as old as the case against it, and, contrary to what is usually thought today, has been made under decent and even democratic auspices by intelligent men. To the extent

[3] In *Ginzburg* v. *United States*, 383 U.S. 463 (1966), the Supreme Court upheld the conviction because Ginzburg had employed "pandering" in the advertising of his obscene wares, a rule never applied in the past and inapplicable in the future. The next year it resumed its habit of reversing obscenity convictions, although the publications involved were at least as offensive as anything Ginzburg published. *Redrup* v. *New York*, 386 U.S. 767 (1967). States have been permitted to prohibit the sale of obscenity to minors, *Ginsberg* v. *New York*, 390 U.S. 629 (1968), but, on the other hand, not to classify films with a view to protecting minors—not, at least, with a "vague" ordinance. *Interstate Circuit, Inc.* v. *Dallas*, 390 U.S. 676 (1968). Mr. Justice Douglas would not prohibit the sale of obscenity even to children; he says, and he ought to know, that most juvenile delinquents are over fifty.

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to which it is known today, however, it is thought to be pernicious or, at best, irrelevant to the enlightened conditions of the 20th century. It begins from the premise that the laws cannot remain indifferent to the manner in which men amuse themselves, or to the kinds of amusement offered them. "The object of art," as Lessing put the case, "is pleasure, and pleasure is not indispensable. What kind and what degree of pleasure shall be permitted may justly depend on the lawgiver."[4] Such a view, especially in this uncompromising form, appears excessively Spartan and illiberal to us; yet Lessing was one of the greatest lovers of art who ever lived and wrote.

We turn to the arts—to literature, films, and the theatre, as well as to the graphic arts which were the special concern of Lessing—for the pleasure to be derived from them, and pleasure has the capacity to form our tastes and thereby to affect our lives. It helps determine the kind of men we become, and helps shape the lives of those with whom and among whom we live. So one can properly ask: Is it politically uninteresting whether men derive pleasure from performing their duties as citizens, fathers, and husbands or, on the other hand, from watching their laws and customs and institutions being ridiculed on the stage? Whether the passions are excited by, and the affections drawn to, what is noble or what is base? Whether the relations between men and women are depicted in terms of an eroticism wholly divorced from love and calculated to destroy the capacity for love and the institutions, such as the family, that depend on love? Whether a dramatist uses pleasure to attach men to what is beautiful or to what is ugly? We may not be accustomed to thinking of these things in this manner, but it is not strange that so much of the obscenity from which so many of us derive our pleasure today has an avowed political purpose.[5] It would seem that the pornographers know intuitively what liberals have forgotten, namely, that there is indeed a "causal relationship . . . between word or pictures and human behavior." At least they are not waiting for behavioral science to discover this fact.

The purpose is sometimes directly political and sometimes political in the sense that it will have political consequences intended or not. This latter purpose is to make us shameless, and it seems to be succeeding with astonishing speed. Activities that were once confined to the private scene—to the "ob-scene," to make an etymological assumption—are now presented for our delectation and emulation in center stage. Nothing that is appropriate to one place is inappro-

[4] *Laocoön,* (New York: Noonday Press) ch. 1, p. 10.

[5] "Chel" and "Hair," for example, are political plays. See also note 2.

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priate to any other place. No act, we are to infer, no human possibility, no possible physical combination or connection, is shameful. Even our lawmakers now so declare. "However plebian my tastes may be," Justice Douglas asked somewhat disingenuously in the *Ginzburg* case, "who am I to say that others' tastes must be so limited and that others' tastes have no 'social importance'?" Nothing prevents a dog from enjoying sexual intercourse in the marketplace, and it is unnatural to deprive men of the same pleasure, either actively or as voyeurs in the theatre. Shame itself is unnatural, a convention devised by hypocrites to inhibit the pleasures of the body. We must get rid of our "hangups."

The importance of shame

But what if, contrary to what is now so generally assumed, shame is natural to man, in the sense of being an original feature of human existence? What if it is shamelessness that is unnatural, in the sense of having to be acquired? What if the beauty that men are capable of knowing and achieving in their living with each other derives from the fact that man is naturally a "blushing creature," the only creature capable of blushing? Consider the case of voyeurism, a case that, under the circumstances, comes quickly to mind. Some of us—I have even known students to confess to it—experience discomfort watching others on the stage or screen performing sexual acts, or even the acts preparatory to sexual acts, such as disrobing of a woman by a man. This discomfort is caused by shame or is akin to shame. True, it could derive from the fear of being discovered enjoying what society still sees as a forbidden game. The voyeur who experiences shame in this sense is judging himself by the conventions of his society and, according to the usual modern account, the greater the distance separating him from his society in space or time, the less he will experience this kind of shame. This shame, which may be denoted concealing shame, is a function of the fear of discovery by one's own group. The group may have its reasons for forbidding a particular act, and thereby leads those who engage in it to conceal it—to be ashamed of it—but these reasons have nothing to do with the nature of man. Voyeurism, according to this account, is a perversion only because society says it is, and a man guided only by nature would not be ashamed of it.

According to another view, however, not to be ashamed—to be a shameless voyeur—is more likely to require explanation, for voyeurism is by nature a perversion.

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> Anyone who draws his sexual gratification from looking at another lives continuously at a distance. If it is normal to approach and unite with the partner, then it is precisely characteristic of the voyeur that he remains alone, without a partner, an outsider who acts in a stealthy and furtive manner. To keep his distance when it is essential to draw near is one of the paradoxes of his perversion. The looking of the voyeur is of course also a looking at and, as such, is as different from the looks exchanged by lovers as medical palpation from a gentle caress of the hand.[6]

From this point of view, voyeurism is perversion, not merely because it is contrary to convention, but because it is contrary to nature. Convention here follows nature. Whereas sexual attraction brings man and woman together seeking a unity that culminates in the living being they together create, the voyeur maintains a distance; and because he maintains a distance he looks at, he does not communicate; and because he looks at he objectifies, he makes an object of that with which it is natural to join; objectifying, he is incapable of uniting and is therefore incapable of love. The need to conceal voyeurism—the concealing shame—is corollary of the protective shame, the shame that impels lovers to search for privacy and for an experience protected from the profane and the eyes of the stranger. The stranger is "at odds with the shared unity of the [erotic couple], and his mere presence tends to introduce some objectification into every immediate relationship."[7] Shame, both concealing and protective, protects lovers and therefore love. And a polity without love—without the tenderness and the poetry and the beauty and, in a word, the uniquely human things that depend on it and derive from it—a polity without love would be an unnatural monstrosity.[8]

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[6] Erwin W. Straus, *Phenomenological Psychology* (New York: Basic Books, 1966), p. 219. I have no doubt that it is possible to want to observe sexual acts for reasons unrelated to voyeurism. Just as a physician has a clinical interest in the parts of the body, philosophers will have an interest in the parts of the soul, or in the varieties of human things which are manifestations of the body and the soul. Such a "looking" would not be voyeurism and would be unaccompanied by shame; or, the desire to see and to understand would require the "seer" to overcome shame. Plato, *Republic*, 439e. In any event, the case of the philosopher is politically irrelevant, and aesthetically irrelevant as well.

[7] *Ibid.*, p. 221.

[8] It is easy to prove that shamefulness is not the only principle governing the question of what may properly be presented on the stage; shamefulness would not, for example, govern the case of a scene showing the copulating of a married couple who love each other very much. That is not intrinsically shameful—on the contrary—yet it ought not to be shown. The principle here is, I think, an aesthetic one: such a scene is dramatically weak because the response of the audience would be characterized by prurience and not by a sympathy with what the scene is intended to portray, a beautiful love. This statement can be tested by joining a collegetown movie audience; it is confirmed unintentionally by a defender of nudity on the stage; see note 11.

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The forgotten argument

To speak in a manner that is more obviously political, there is a connection between self-restraint and shame, and therefore a connection between shame and self-government or democracy. There is, therefore, a political danger in promoting shamelessness and the fullest self-expression or indulgence. To live together requires rules and a governing of the passions, and those who are without shame will be unruly and unrulable; having lost the ability to restrain themselves by observing the rules they collectively give themselves, they will have to be ruled by others. Tyranny is the natural and inevitable mode of government for the shameless and self-indulgent who have carried liberty beyond any restraint, natural and conventional.

Such, indeed, was the argument made by political philosophers prior to the 20th century, when it was generally understood that democracy, more than any other form of government, required self-restraint, which it would inculcate through moral education and impose on itself through laws, including laws governing the manner of public amusements. It was the tyrant who could usually allow the people to indulge themselves. Indulgence of the sort we are now witnessing did not threaten his rule, because his rule did not depend on a citizenry of good character. Anyone can be ruled by a tyrant, and the more debased his subjects the safer his rule. A case can be made for complete freedom of the arts among such people, whose pleasures are derived from activities divorced from their labors and any duties associated with citizenship. Among them a theatre, for example, can serve to divert the search for pleasure from what the tyrant regards as dangerous or pernicious pursuits.[9]

Such an argument was not unknown among thoughtful men at the time modern democracies were being constituted. It is to be found in Jean-Jacques Rousseau's *Letter to M. d'Alembert on the Theatre*. Its principles were known by Washington and Jefferson,

[9] The modern tyrant does not encourage passivity among his subjects; on the contrary, they are expected by him to be public-spirited: to work for the State, to exceed production schedules, to be citizen soldiers in the huge armies, and to love Big Brother. Indeed, in Nazi Germany and the Soviet Union alike, the private life was and is discouraged, and with it erotic love and the private attachments it fosters. Censorship in a modern tyrannical state is designed to abolish the private life to the extent that this is possible. George Orwell understood this perfectly. This severe censorship that characterizes modern tyranny, and distinguishes it sharply from pre-modern tyranny, derives from the basis of modern tyrannical rule: both Nazism and Communism have roots in theory, and more precisely, a kind of utopian theory. The modern tyrant parades as a political philosopher, the heir of Nietzsche or Marx, with an historical mission to perform. He cannot leave his subjects alone.

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to say nothing of the antifederalists, and later on by Lincoln, all of whom insisted that democracy would not work without citizens of good character. And, until recently, no justice of the Supreme Court and no man in public life doubted the necessity for the law to make at least a modest effort to promote that good character, if only by protecting the effort of other institutions, such as the church and the family, to nourish and maintain it. The case for censorship, at first glance, was made wholly with a view to the political good, and it had as its premise that what was good for the arts and sciences was *not* necessarily good for the polity.

There was no illusion among these thinkers that censorship laws would be easy to administer, and there was a recognition of the danger they represented. One obvious danger was that the lawmakers will demand too much, that the Anthony Comstocks who are always with us will become the agents of the law and demand not merely decency but sanctity. Macaulay stated the problem in his essay on Restoration Comedy (mild fare compared to that regularly exhibited in our day):

> It must, indeed, be acknowledged, in justice to the writers of whom we have spoken thus severely, that they were to a great extent the creatures of their age. And if it be asked why that age encouraged immorality which no other age would have tolerated, we have no hesitation in answering that this great depravation of the national taste was the effect of the prevalence of Puritanism under the Commonwealth.
>
> To punish public outrages on morals and religion is unquestionably within the competence of rulers. But when a government, not content with requiring decency, requires sanctity, it oversteps the bounds which mark its proper functions. And it may be laid down as a universal rule that a government which attempts more than it ought will perform less. . . . And so a government which, not content with repressing scandalous excesses, demands from its subjects fervent and austere piety, will soon discover that, while attempting to render an impossible service to the cause of virtue, it has in truth only promoted vice.

The truth of this was amply demonstrated in the United States in the Prohibition era, when the attempt was made to enforce abstemiousness and not, labels to the contrary, temperance. In a word, the principle should be not to attempt to eradicate vice—the means by which that might conceivably be accomplished are incompatible with free government—but to make vice difficult, knowing that while it will continue to flourish covertly, it will not be openly exhibited. And that was thought to be important.

It ought to be clear that this old and largely forgotten case for censorship was made by men who were not insensitive to the beauty

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of the arts and the noble role they can play in the lives of men. Rousseau admitted that he never willingly missed a performance of any of Molière's plays, and did so in the very context of arguing that all theatrical productions should be banned in the decent and self-governing polity. Like Plato he would banish the poets, yet he was himself a poet—a musician, opera composer, and novelist—and demonstrated his love for and knowledge of poetry—or as we would say, the arts—in his works and in his life. But he was above all a thinker of the highest rank, and as such he knew that the basic premise of the later liberalism is false. A century later John Stuart Mill could no longer conceive of a conflict between the intrinsic and therefore legitimate demands of the sciences and the intrinsic and therefore legitimate demands of the polity. Rousseau had argued that the "restoration" of the arts and sciences did not tend to purify morals, but that, on the contrary, their restoration and popularization would be destructive of the possibility of a good civil society. His contemporaries were shocked and angered by this teaching and excluded Rousseau from their society; and taught by them and more directly by Mill and his followers—Justice Douglas, for example—we might tend to dismiss it as the teaching of a madman or fool. Are we, however, still prepared to stand with Mill and his predecessors against Rousseau, to argue that what is good for science is necessarily good for civil society? Or have certain terrible events and conditions prepared us to reconsider that issue? If so, and especially in the light of certain literary and theatrical events, we might be prepared to reconsider the issue of whether what is good for the arts is necessarily good for civil society.

III

In practice, censors have acted out of an unsophisticated concern for public morality, with no love for the arts, and with no appreciation of what would be sacrificed if their policy were to be adopted. Their opponents have resisted them out of a sophisticated concern for the freedom of expression, often with a true love for the arts, but with no concern for the effect of this freedom on public morality. It would appear that concern for public morality requires censorship and that concern for the arts requires the abolition of censorship.

The law developed by our courts is an attempt to avoid this dilemma by denying that its exists. But with what results? Rousseau predicted there would be, not only a corruption of public morality,

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but a degradation of the arts. His case for censorship appears only at first glance to be made wholly with a view to protecting the simple and decent political order from corruption at the hands of sophisticated literature and the theatre; it was in fact also a case made with a view to preventing the corruption of the arts themselves. Their popularization would be their degradation. To deny the tension between politics and the arts is to assume that the relation between them requires no governing, that what is produced by writers and dramatists may be ignored by the law in the same manner that the production of economic goods and services was once said to be of no legitimate concern of the law. The free market will be permitted to operate, with the result that what appears in print and on the stage will be determined by the tastes operating in that market, which in a democracy will be a mass market. The law will no longer attempt to influence this market; having denied the distinction between the non-obscene and the obscene, it will in fact come to deny the distinction between art and trash. This is what has happened. Justice Douglas, who told us that the "ideal of the Free Society written into our Constitution . . . is that people are mature enough . . . to recognize trash when they see it," also denies that anyone, mature or immature, can define the difference between art and trash. "Some like Chopin, others like 'rock and roll.' Some are 'normal,' some are masochistic, some deviant in other respects. . . . But why is freedom of the press and expression denied them? When the Court today speaks of 'social value' does it mean a 'value' to the majority? . . . If a publication caters to the idiosyncracies of a minority, why does it not have 'social importance.'?[10] To him, whether a publication has "social value" is answered by whether anyone wants to read it, which is to say that any publication may have "social value." It is all a question of idiosyncratic taste: some like Chopin, some like rock and roll; some are normal—or as he writes it, "normal"—and some masochistic or deviant—or, as he ought to have written it, "deviant." These statements of course make nonsense of his business of ascending "from plateau to plateau and finally reach[ing] the world of enduring ideas"; because if everything has value, and if there is no standard by which to judge among them, then there is no upward or downward, no "plateau" higher than another "plateau," no art or trash, and, of course, no problem. Art is now defined as the "socially important," and this, in turn, is defined by Douglas as anything anyone has a taste for.

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[10] *Ginzburg* v. *United States*, 383 U.S. 463, 489-490 (1966). Dissenting opinion.

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Distinguishing art from trash

It is true that Douglas is uniquely vulgar for a Supreme Court justice, but his colleagues have not been far behind him on the substantive issue. In principle they acknowledge the category of socially "important" publications and productions, but they do not depend on an educated critical judgment to define it. They simply accept the judgment of any literary hack willing to testify, which amounts to transferring the mass market to the courtroom. It was solemnly said in testimony that *Fanny Hill* is a work of social importance, which was then elaborated as "literary merit" and "historical value," just the sort of thing to be taught in the classroom (and, as Douglas argued, in sermons from the pulpit). Another "expert witness" described it as a work of art that "asks for and receives a literary response." Its style was said to be "literary" and its central character, in addition to being a whore, an "intellectual," which is probably understood to be the highest praise within the power of these experts to bestow. An intellectual, the court was then told, is one who is "extremely curious about life and who seeks . . . to record with accuracy the details of the external world"—in Fanny's case, such "external details" as her "physical sensations."

Censorship, undertaken in the name of the public necessity to maintain the distinction between the non-obscene and the obscene, has the secondary effect of lending some support to the distinction between art and trash. At a minimum it requires a judgment of what is proper and what is improper, which is to say a judgment of what is worthy of being enjoyed and what is unworthy, and this has the effect of at least supporting the idea that there is a distinction to be made and that the distinction is important. Our law as announced by the judges of our highest court now denies this, explicitly in the case of Douglas and implicitly in the case of his colleagues making up the rest of the Court's majority. The law has resigned in favor of the free mass market, and it has done so not because the free market is seen as a mechanism best calculated to bring about a particular result (for example, the material wealth desired by the *laissez-faire* economists) but because it attaches no significance to the decisions the market will make. The popularization of the arts will not lead to their degradation because there is no such thing as degradation.

The *New York Times* does not agree with this when it calls for "sophisticated critical judgment" to save us from the pile of muck that now constitutionally passes for art. But the "sophisticated critical judgment" of its own drama and book pages praised the very

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works condemned in the editorial; besides, much of this market is impervious to "sophisticated critical judgment." This is confirmed in the *Times* itself in a piece printed a few months later on the first page of the Sunday drama section: "Nobody yet knows how to control the effect of nudity for a production's purposes, but producers encourage it anyhow. Why? The explanation, I should think, is obvious: sex, as always, is good box office."[11] Exactly. It was the law, not the critics, that kept the strip tease and the "skin flick" confined to the illegitimate theatre, and it is foolish to think, or to have thought, that the critics alone will be able to keep them there, or, in fact, from flourishing in the legitimate theatre. That game is caught, as Lincoln would have put it. What remains at large, unanswered, is whether "sophisticated critical judgment" can preserve artistic tastes in another part of the same theatre, or whether there will be any "sophisticated critical judgment." To ask this is to wonder whether the public taste—or at least, a part of the public's taste —can be educated, and educated with no assistance from the law. This is an old question; to ask it is to return to Rousseau's quarrel with Voltaire and the Enlightenment, and to Tocqueville and John Stuart Mill—in short, to the beginnings of modern democracy where, in political philosophy, the question received thematic treatment.

A role for the university?

The principle of modern democracy is the natural equality of all men, and the problem was to find some way of preventing this principle from becoming all-pervasive, and especially from invading the arts and sciences themselves. Stated otherwise, the problem was to find a substitute for the aristocratic class which had formerly sustained the arts and sciences—some basis on which, or some citadel from which, the arts and sciences could resist public opinion. The constitutional principle of freedom of speech and press would, perhaps, protect them from hostile political passions, but this institutional device would not protect them from the much more subtle danger, corruption by public opinion, of coming to share the public's taste and of doing the public's work according to the public's

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[11] *New York Times*, January 18, 1970. The author of this piece, Martin Gottfried, a man of "sophisticated critical judgment" presumably—after all, the *Times* printed him—defends "Che!" and others, and ends up with a very sophisticated defense of a homosexual rape scene from a production entitled "Fortune and Men's Eyes," done, of course, in the nude and apparently leaving nothing to the imagination. His principle is that "no climactic scene, in any play, should happen offstage. . . ."

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standards. One solution, it was hoped by some, would be the modern university, which, as Allan Bloom has recently written, was to be "a center for reflection and education independent of the regime and the pervasive influence of its principles, free of the overwhelming effect of public opinion in its crude and subtle forms, devoted to the dispassionate quest for the important and comprehensive truths."[12] Tenure and academic freedom would protect the professors of the arts and sciences, and thereby protect the arts and sciences themselves, and the students would be educated in the principles of the arts and sciences and their tastes formed accordingly. The education of the public's taste in the arts, which will prevent the popularization of the arts from becoming the cause of their degradation, must take place in the universities if it is to take place at all.

But the so-called expert witnesses who testified in the obscenity cases came from these very universities. *Fanny Hill's* champions were university professors, and not, by any means, in minor institutions. To rely on the professors to provide the "sophisticated critical judgment" or to educate the tastes of the mass market, or of any part of it, is to ignore what is going on in the universities. Several years ago Cornell paid $800 to a man to conduct (lead? orchestrate? create?) a "happening" on campus as part of a Festival of Contemporary Art. This happening consisted of the following: a group of students was led to the city dump where they selected the charred remains of an old automobile, spread it with several hundred pounds of strawberry jam, removed their shirts and blouses, and then danced around it, stopping occasionally to lick the jam. By 1970 standards this is not especially offensive; it is silly, as so many "college boy" antics have been silly. What distinguishes it from goldfish swallowing and panty raids is that it was conducted under official university auspices and with the support and participation of professors.

The call for a "sophisticated critical judgment" is merely a variety of the general call for education, which libertarians have customarily offered as an alternative to the policy of forbidding or punishing speech. It is an attractive alternative, attractive for its consistency with liberal principles as well as for its avoidance of the difficulties accompanying a policy of censorship; unfortunately, in the present intellectual climate, education in this area is almost impossible. Consider the case of the parent who wants to convince

[12] "The Democratization of the University," to be published in Robert A. Goldwin (ed.), *How Democratic is America?* (Chicago: Rand McNally).

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his children of the impropriety of the use of the four-letter verb meaning to copulate. At the present time the task confronting him is only slightly less formidable than that faced by the parent who would teach his children that the world is flat. Just as the latter will have to overcome a body of scientific evidence to the contrary, the former will have to overcome the power of common usage and the idea of propriety it implies. Until recently propriety required the use of the verb "to make love,"[13] and this delicacy was not without purpose. It was meant to remind us—to *teach* us, or at least to allow us to be taught—that whereas human copulation can be physically indistinguishable from animal copulation generally, it ought to be marked by the presence of a passion of which other animals are incapable. Now, to a quickly increasing extent, the four-letter verb—more "honest" in the opinion of its devotees—is being used openly and therefore without impropriety. The parent will fail in his effort to educate because he will be on his own, trying to teach a lesson his society no longer wants taught—by the law, by the language, or by the schools. Especially by the schools. When in 1964 the University of California at Berkeley could not find a reason to censure the students for whom "free speech" meant the brandishing of the four-letter verb on placards, it not only made legitimate what had been illegitimate, but announced that from that time forward it would not attempt to teach its students anything contrary to their passions—sexual, political, or, with reference to drug use, physiological. What became true then at Berkeley is now true generally. The professors have nothing to teach their students. The younger ones have joined the students and have come to share their tastes and their political passions; the older ones are silent, and together they are in the process of abdicating to the students their authority to govern the universities, to enforce parietals, to prescribe the curriculum, and even their right to teach them. Critical judgment is being replaced by "doing your own thing," which is what Justice Douglas was talking about; and this being so, it is doubtful, to say the least, whether the universities will be able to educate the tastes of anyone. And if this is not done in the universities, where can it be done?[14] Where in the midst of all the vulgarity and this in-

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[13] That this is not merely the product of English or American "Puritanism" is proved by, for example the French *faire l'amour* and the Italian *fare-all 'amore*, as well as the fastidious German *mit einem liebeln.*

[14] In a number of universities, students are permitted to receive course credit for "courses" taught by themselves to themselves. Not surprisingly, it was left to Cornell to carry this to its absurd extreme. In May, 1970, the Educational Policy Committee of the College of Arts and Sciences voted 5-2 to grant "three credit

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cessant clamor for doing one's own thing can be found a refuge for the arts? Yet, there can be no "sophisticated critical judgment" without it.

IV

One who undertakes to defend censorship in the name of the arts is obliged to acknowledge that he has not exhausted his subject when he has completed that defense. What is missing is a defense of obscenity. What is missing is a defense of the obscenity employed by the greatest of our poets—Aristophanes and Chaucer, Shakespeare and Swift—because it is impossible to believe, it is unreasonable to believe, that what they did is indefensible; and what they did, among other things, was to write a good deal of obscenity. Unfortunately, it would require a talent I do not possess to give a sufficient account of it.

They employed it mainly in comedy, but their purpose was not simply to make us laugh. Comedy, according to Aristotle,[15] makes us laugh at what is ludicrous in ugliness, and its purpose is to teach, just as tragedy teaches by making us cry before what is destructive in nobility. The latter imitates what is higher, the former what is lower, but they are equally serious; Aristotle discussed both, and Shakespeare, for example, was a comic as well as a tragic poet.

Those aspects of his soul that make man truly human and distinguish him from all other beings—higher or lower in the natural order of things—require political life. And no great poet ever denied this. Man's very virtues, as well as their counterparts, his vices, require him to be governed and to govern; they initiate demands that can be met only in political life—but the poet knows with Rousseau that the demands of human virtue cannot be fully met in political life because they transcend political life. The poet knows the beauty of that order beyond the polity; he reminds us that there is an order outside the conventional and that we are part of that natural order, as well as of the conventional. Shakespeare knows with Rousseau that there is a tension between this natural order and the con-

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hours to ten students who had 'taught' themselves a course in children's literature"—including not only *Alice in Wonderland,* but *Pinocchio, Where the Wild Things Are,* and *Now We Are Six.* "The students claimed that they had not read the books before taking their course." This implies that it is one of the jobs of a university to remedy deficiencies in kindergarten education. In any case, as one of the two dissenters later reported to the full faculty, "whether the books had ever been read to them remains unclear." Cornell *Chronicle,* June 4, 1970.

[15] *Poetics,* 1449a-35.

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ventional or legal order, and his purpose is to resolve it, at least for some men, at the highest possible level. These men must first be shown that this world of convention is not the only world, and here is where obscenity may play a part—that beyond Venice there is Portia's Belmont, the utopia where the problems that plague Venice do not exist.[16] Obscenity can be used to ridicule the conventional. But it is used in the name of the natural, that order outside the conventional according to which the conventional may be criticized and perhaps, if only to an extent, reformed. Obscenity in the hands of such a poet can serve to *elevate* men, elevate them, the few of them, above the conventional order in which all of us are forced to live our mundane lives. Its purpose is to teach what is truly beautiful—not what convention holds to be beautiful—and to do so by means of pleasure, for obscenity can be pleasurable.

Shakespeare expresses this conflict between nature and law in Edmund's soliloquy at the beginning of Act I, Scene 2, of "King Lear:"

> Thou, Nature, art my goddess; to thy law
> My services are bound. Wherefore should I
> Stand in the plague of custom, and permit
> The curiosity of nations to deprive me,
> For that I am some twelve or fourteen moonshines
> Lag of a brother? Why bastard? wherefore base?
> When my dimensions are as well compact,
> My mind as generous, and my shape as true,
> As honest madam's issue? Why brand they us
> With base? with baseness? bastardy? base, base?
> Who, in the lusty stealth of nature, take
> More composition and fierce quality
> Than doth, within a dull, stale, tired bed,
> Go to th' creating a whole tribe of fops,
> Got 'tween asleep and wake?—Well, then,
> Legitimate Edgar, I must have your land:
> Our father's love is to the bastard Edmund
> As to th' legitimate: fine word,—*legitimate!*
> Well, my legitimate, if this letter speed,
> And my invention thrive, Edmund the base
> Shall top th' legitimate. I grow; I prosper:—
> Now, gods, stand up for bastards!

This serves to illustrate the theme to which great poets address themselves—what is right by law and what is right by nature—and in the development of which the use of obscenity in comedy has a

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[16] See the chapter on "The Merchant of Venice" in Allan Bloom's (with Harry V. Jaffa) *Shakespeare's Politics* (New York: Basic Books, 1964).

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legitimate and perhaps even noble role. When it is so used it is fully justified, especially because great poetry, even when it is obscene, is of interest only to a few—those who read it primarily for what is beyond its obscenity, that towards which obscenity points. But when obscenity is employed as it is today, merely in an effort to capture an audience, or to shock without elevating, or in the effort to set loose idiosyncratic "selfs" doing their own things, or to bring down the constitutional order, it is not justified, for it lacks the ground on which to claim exemption from the law. The modern advocates of obscenity do not seem to be aware of this consequence of their advocacy. They have obliterated the distinction between art and trash, and in so doing they have deprived themselves of the ground on which they might protest the law. What possible argument could have been used against the police had they decided to arrest the participants in the Cornell "happening" for indecent exposure, or against a law forbidding these festivals of contemporary "art?" In this generous world the police must be accorded a right to do their "own thing" too, and they would probably be able to do it with the support of the majority and therefore of the law. In a world of everyone doing his own thing, the majority not only rules but can do no wrong, because there is no standard of right and wrong. Justice Douglas sees his job as protecting the right of these contemporary "artists" to do their own thing, but a thoughtful judge is likely to ask how an artistic judgment that is wholly idiosyncratic can be capable of supporting an objection to the law. The objection, "*I* like it," is sufficiently rebutted by, "*we* don't."

How to express in a rule of law this distinction between the justified and the unjustified employment of obscenity is no simple task. That I have admitted and willingly concede. I have also argued that it cannot be done at all on the premise from which our law has proceeded. I have, finally, tried to indicate the consequences of a failure to maintain the distinction in the law: not only will we no longer be able to teach the distinction between the proper and the improper, but we will no longer be able to teach—and will therefore come to forget—the distinction between art and trash. Stated otherwise, censorship, because it inhibits self-indulgence and supports the idea of propriety and impropriety, protects political democracy; paradoxically, when it faces the problem of the justified and unjustified use of obscenity, censorship also serves to maintain the distinction between art and trash and, therefore, to protect art and, thereby, to enhance the quality of this democracy. We forgot this. We began with a proper distrust of the capacities of juries and judges to make

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sound judgments in an area that lies outside their professional competence; but led by the Supreme Court we went on improperly to conclude that the judgments should not be made because they cannot be made, that there is nothing for anyone to judge. No doubt the law used to err on occasion; but democracy can live without "Mrs. Warren's Profession," if it must, as well as without *Fanny Hill*—or to speak more precisely, it can live with the error that consigns "Mrs. Warren's Profession" to under-the-counter custom along with *Fanny Hill.* It remains to be seen whether the true friend of democracy will want to live in the world without under-the-counter custom, the world that does not know the difference between "Mrs. Warren's Profession" and *Fanny Hill.*

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Dissenting and concurring opinions

I. ALEXANDER BICKEL

THE civil libertarian position on obscenity is that if we forget about it, it will go away. We aren't told to admire the king's beautiful cloak. We are told not to care whether he has one on or not. Walter Berns is the little boy who said the king is naked, and added that it makes a hell of a difference.

Never mind whether books get girls pregnant, or whether sexy or violent movies turn men to crime. Assume that they do not, or that, at any rate, there are plenty of other efficient causes of pregnancy and crime. Assume further that we must protect privacy; that government, therefore, properly has no business punishing anyone for amusing himself obscenely in his home, and must ignore the means by which he may have obtained his obscene materials, if all it knows is that he uses them at home; assume, in other words, that the Supreme Court was right in *Stanley v. Georgia*, in 1969, when it held: "Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home. If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his house, what books he may read or what films he may watch."

Take these assumptions, and still you are left with at least one problem of large proportions. It concerns the tone of the society, the mode, or to use terms that have perhaps greater currency, the style

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and quality of life, now and in the future. A man may be entitled to read an obscene book in his room, or expose himself indecently there, or masturbate, or flog himself, if that is possible, or what have you. We should protect his privacy. But if he demands a right to obtain the books and pictures he wants in the market, and to foregather in public places—discreet, if you will, but accessible to all—with others who share his tastes, then to grant him his right is to affect the world about the rest of us, and to impinge on other privacies. Even supposing that each of us can, if he wishes, effectively avert the eye and stop the ear (which, in truth, we cannot), what is commonly read and seen and heard and done intrudes upon us all, want it or not. As Berns says, how is a parent who would teach his children the impropriety of certain forms of speech going "to overcome the power of common usage and the idea of propriety it implies?"

Now, not only books and pictures and speech, but all sorts of behavior and artifacts—architecture, fashions in clothes and in other aspects of personal appearance, habits such as smoking and drinking, overt public homosexuality—all affect the mode and quality of life, all impinge unavoidably on the privacy of each of us. Yet each of us cannot but tolerate a very great deal that violates our freedom and privacy in these senses, because the alternative is to let government, acting perhaps in behalf of a majority, control it all; and that is tyranny—massive tyranny, if it works, selective or occasional and random tyranny if, as is more likely, it does not work very well.

So, as Berns is well aware, to identify the problem of obscenity truly is to expose its intractability. But to lapse into total permissiveness about obscenity, to equate it with smoking and drinking and the miniskirt, is not the sole option left to us. The problem is no less intractable as it is raised by the physical environment, or by extremities of fashion which are called indecent exposure, or by extremities of behavior, such as boisterous drunkenness or open lovemaking, hetero or homo. Yet the same Supreme Court which during the past decade has decreed virtually unlimited permissiveness with regard to obscenity has not construed the Constitution so as to forbid the placing of legal restraints on architectural designs, for example, or on indecencies of public behavior, and is not likely to do so. Nor is the Court very likely to tell us that fostering heterosexual marriage while not countenancing homosexual unions—which is what the legal order does, of course—is unconstitutional. The reason cannot be that the First Amendment throws special safeguards around

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speech and other forms of communication, which are relevant to obscenity. That is not even a significant technical point, because the relevant protections are drawn as much from the Due Process Clause of the Fourteenth Amendment as from the First. And in substance, the point is absurd. There is no bright line between communication and conduct. The effect, in the segment of both that we are here considering, is the same. What is *Oh, Calcutta?* Communication or conduct?

Law which attempts to come to grips with the problem of obscenity—or aesthetics in the physical environment, or drinking, or exposure of the body, or drug-taking, or offensive or assaultive speech—is a different kind of instrument, running greater risks and expecting to attain a rather more remote approximation of its ends, than the law which forbids murder and theft, or defines the rights and obligations of a property-owner, or governs the relations between General Motors and the United Automobile Workers of America.

VERY little of what is called law achieves its ends always or precisely. But much of it tries to, because it is fully confident of the validity of its ends, which it can and does define intelligibly and with some precision. A law attempting to regulate obscenity, however, has to exist in a peculiar tension. It must avoid tyrannical enforcement of supposed majority tastes, while providing visible support for the diffuse private endeavors of an overwhelming majority of people to sustain the style and quality of life minimally congenial to them. This sort of law, even if it is as exact in some of its applications as the statutes proposed by Richard Kuh (in his thoughtful book, *Foolish Figleaves?*), necessarily accepts a certain ambiguity about its ends.

It is not meant to wipe all the obscenity it defines off the face of the earth, wherever it finds it. If nothing else, the line drawn in *Stanley v. Georgia* prevents this; on the other side of this line, one would concede, tyranny does raise its head. Moreover, even the mere effort to enforce such a law perfectly, or with the intent to achieve the nearest possible approximation of perfection, as the law against murder is enforced—even just this effort would verge in practice on the tyrannical. And if the life style of large numbers of people changes despite the law, or cannot successfully be affected by it, so that any sort of even-handed enforcement at all, however minimal, is impossible, then any enforcement at all becomes tyrannical, and the law must be abandoned, as we abandoned prohibition of liquor, and ought perhaps to abandon prohibition of marijuana. Again, if

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such a law, even though vigorously enforced, turns out hardly to touch the activity it forbids, because the motive to engage in it is too strong, albeit only a limited number of people are subject to the irresistible urge, then all the law achieves by making the activity illegal is to place an economic tariff on it, and to cause a "ripple effect" of crime. This, as Professor Herbert L. Packer has pointed out, is the case with laws that punish gambling or the taking of addictive drugs. These laws ought to be repealed and replaced by other forms of regulation that are less productive of undesirable side-effects.

The short of it, then, is that its very existence, and occasional but steady enforcement in aggravated cases for the sake of making itself visible, is the real and virtually sole purpose of a law against obscenity. Its role is supportive, tentative, even provisional. It walks a tight-rope, and runs high risks. Every so often in some corner of the country, some idiot finds Chaucer obscene or the lower female leg indecent. For this reason, the federal government itself, as Justice Harlan has long argued, and as Chief Justice Burger agrees, should stay out of the business of censorship altogether, because its idiocies, when they occur, affect the whole country. But the Supreme Court, while exercising procedural oversight, ought to let state and local governments run the risks if they wish. For the stakes, as Berns shows, are high.

II. STANLEY KAUFFMANN

One pleasant aspect of pornography discussions is that they never end, even within oneself. No set of arguments can be air-tight, and one can always think of points to be added or changed in one's own arguments. But here are some of my present views:

* * *

I DISLIKE pornography; and I dislike censorship laws.

I dislike pornography because after the excitements, there comes tedium; and with the tedium comes a sense of imperfection. After sex itself comes no such tedium (languor is something else) and no such basic sense of inappropriateness. Porno excites me because all my neural systems seem to be adequately hooked up, but after the shock of crossing the threshold into that "world" wears off, which doesn't take so long, I begin to think that porno represents an ideal

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—essentially male—of sexual freedom and power, unrelated to reality as is, or as is desirable. I am an anti-idealist; ideals seem morally and functionally corruptive. I am against this ideal as well.

I dislike censorship laws because they intrude on personal rights. Most laws operate between at least two people: they protect me from you and vice-versa. Laws against pornography, like laws against drinking and drug-taking and suicide, come between me and myself. I object to the state's arrogance.

* * *

PEOPLE want pornography.

This has been true of many cultures, especially for men, in many areas. Porno producers are not philanthropists or missionaries; they're in business because people want what they produce. What right have some of us to tell others that they may not have what they want? (I know some intelligent, cultivated men—and a few such women—who delight in porno.) I disbelieve in the legislation of taste.

The question of theatrical productions like *Oh, Calcutta!* is self-solving. If you want to go, go; if not, don't. The concept of "the dram of eale" is a puritan delusion. Gresham's Law doesn't operate in art. If bad art drove out good, there would not be any good art at all because for centuries there has been more bad art than good.

Most films are now clearly labeled by the ratings system of the Motion Picture Association of America. That system has manifest defects, but I have argued for it—and would still—as the best defense against repression. The X rating is, as is often said, a license for opportunists, but numbers of people want what the opportunists offer and I don't recognize anyone's right to deny it to them. More important, the X rating is a license for the serious film maker who wants to deal with sexual subjects. I'm glad that *Midnight Cowboy* (whatever its faults) was made and widely distributed, something that was difficult anyway and would have been nearly impossible without the protection of the X rating.

The concept of the state's interest in pornography, possibly related to the Roman concept of the republic of virtue, is gradually being eroded by scientific research. The researches in the Lockhart report, incomplete though they are, support the belief that there is no connection between porno and sexual crime. A Danish study (*New York Times*, Nov. 9, 1970) finds that sex crimes have sharply declined in Denmark—coincidentally?—in the three years since

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censorship laws have been eased there. The data and conclusions of the British Arts Council report on obscenity laws (full text in the *New Statesman,* August 8, 1969) support a recommendation for repeal of the Obscene Publication Acts. The state surely has a legitimate interest in the moral welfare of the community, but every ground for including porno in that interest is weakening.

* * *

THE only real legal question is the protection of children.

And it is a *question.* I can't define what a child is—six, yes, but sixteen?—and I can't define what "protection" is. I'm simply not convinced that a young person without sexual experience and some maturity of judgment can see pornography as pornography: that is—aside from understanding the acts themselves and understanding the unconventionality (even impossibility) of some of them—can see the relation of porno to experience, as commentary and stimulant and revenge. "Depravity and corruption" are supposed to be considerations, too, though no one seems to know much about them. I have no wish to be blithe about parents' concern for a child (particularly since I have no children), but my guess is that a parent's attitude toward his child's exposure to porno is as much secret embarrassment at revelation of his own fantasies as it is protection of the young.

Censorship legislation for minors, however, only moves the semantic and moral problem to a different locus. Two sociologists on the Lockhart commission recommended the abolition of *all* statutory legislation, for young persons as well as adults, on the ground that obscenity and pornography have long proved undefinable. They would rather rely on "informal social controls" and "improvements in sex education and better understanding of human sexual behavior" than on "ambiguous and arbitrarily administered laws."

Nevertheless I confess that, even without scientific data to prove harm, I'm uneasy at the thought of children being exposed to pornography before those "improvements" are realized.

* * *

PORNO is of two distinct kinds.

I don't mean the difference between porno and erotic art nor the argument that sections of recognized classics—Rabelais, Joyce, etc.—are pornographic. (An argument I cannot accept. A

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sexual portion of a genuine artwork cannot—in my understanding—be pornographic. The latter means, for me, material devised *only* for sexual stimulation.)

The real difference is between imagined porno—written or drawn or painted—and performed porno, done in actuality or on film or in still photographs. The latter entails the degradation of human beings. It doesn't seem to me to matter that these performing men and women always seem cheerful and busily engaged, or that (reportedly) some of the occupants enjoy it or that some of them perform public sex acts as part of lives that are otherwise quite conventional. Obviously conditionings and rationales can vary widely, but I cannot believe that the use of human beings for these purposes is socially beneficial or morally liberating. On the contrary, I think it socially stultifying and morally warped.

I'm not talking about nudity and simulated intercourse in such plays as *Che!*, which are frequently done quite self-righteously as an attempt to *épater le bourgeois*. I mean (currently available in person and on film in New York and other cities) the public performance of coition, fellatio, cunnilingus, and mutual masturbation—with the coition usually interrupted so that the male ejaculation can be seen.

I've been as excited by watching some of those films as a human being ought presumably to be. But essentially those films seem to me acts of vindictiveness by men against women in return for the sexual restrictions and taboos of our society and for the cruelties of women toward men that those restrictions have produced. The vindictiveness is essentially mean-spirited and exploitative. I would hope that the socio-sexual improvements on which the Lockhart sociologists rely may affect performed porno first.

In any event, I think that the lumping-together of all porno—imagined and performed—is a conceptual error. The one-to-one relation of writer and reader is a different matter, in psychic and social senses, from the employment of people to enact fantasies.

* * *

CONCLUSIONS, *pro tem.*

I am not a swinger. I don't believe in pornography as a healthful reminder of the full genital life amidst a pallid and poky society, or as an extender of consciousness in any beneficial way. These views seem to me phony emancipation—in fact, a negation of the very fullness of life that is ostensibly being affirmed. Much

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better to concentrate on our sillinesses about the romanticized restrictions of love and the shortcomings of marriage, on the humiliations of both men and women in our rituals of courtship and bedding and wedding, that make pornography such a popular form of vengeance.

But the legal suppression of pornography seems to me anticivil and anticivilized (because it misses the anticivilizing reasons for porno), and also shows a failure in sense of humor. (If the idea of sex is funny, as it often is, the idea of porno is funniness multiplied.) I'm against censorship laws just as I'm against laws against certain kinds of sexual practice, or against any sexual practice between unmarried people, that still exist in many parts of this country. I want to be able to have porno if I want it. The purely personal opinion that I don't happen to want it very often should not be made the law of the land.

To put it entirely subjectively, I think that one way to cure my uneasiness on the subject of porno is to repeal all the laws restricting it, except possibly the ones forbidding the advertising and sale to minors. The more mature the individual, the more he resents the idea of being forbidden something that affects him alone; and the more mature individuals there are, the better the polity that Mr. Berns is interested in.

III. WILSON CAREY McWILLIAMS

THE arts and sciences are forces to conjure with, magical powers that speak to the deepest desires and hopes of men. They puzzle, tempt and beguile the rudest barbarian; the city without art and science will not edure, whatever its theoretical virtues, because it is less than human.[1] The power of the arts and sciences necessarily makes them a political problem, for magic is black as well as white.

All political societies short of the ideal are founded on opinion, and opinion is an uncertain ground. The charlatan can mislead "true opinion," and base art and science can corrupt a good society. To that extent, Berns's case cannot be refuted. But it is equally true that a corrupt society generates degraded arts and sciences. That sad result is, in fact, more certain than the possible evils that ignoble art and science may inflict on a good state, for man is a political ani-

[1] *Republic,* Book II, 372-373.

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mal before he is an artist, a scientist or a philosopher. At best, censorship corrects exceptions; it cannot create the rule. In a corrupt society, the censor himself is likely to reflect the general degeneracy and will make matters worse rather than better.

The core of my disagreement with Berns is that he understates the problem. Perhaps this is due to the limitations of the dialogue between Berns and the liberal ideologues whom he chooses for antagonists, but Berns does seem to contend that America has a sound civic morality to which our permissive attitude toward obscenity is an exception. This, I think, is nonsense. In fact, Berns's argument, as stated, partially supports those who regard censorship of the obscene as no more than a neurotic fixation, a hypocritical, secretly leering fascination with sexuality devoid of genuine moral judgment.

It is significant, after all, that Berns states his case in terms of the relation between censorship and republican virtue, but limits its application to the single instance of obscenity. Why should obscenity be singled out? The censorship of antiquity dealt with the "whole range of our social proprieties,"[2] with all offenses against republican morals and good order. And by any reasonable standard, there are offenses against civic virtue in America which are both more serious and more worthy of censorship than is obscenity.

The ancients asked their censors to punish pride, arrogance, display, and contempt for one's fellow citizens, recognizing all of these as violations of the principle of the equality and dignity of citizens and a danger to the harmony—the "good order"—of the republic. By that standard, racist oratory and ethnic slurs merit censorship, and it would not be hard to argue that Jensen's theories—their dubious scientificity aside—should have been denied circulation. It is no small defect in the case against violence made by "law and order" fanatics that they neglect the provocations offered by contempt, bad faith, and luxury;[3] the East Side socialite in Manhattan, the "limousine liberal," offends against good order as much as or more than the ghetto rioter or the middle-class vigilante, for his life is an affront and a provocation to both. Here, too, certainly, is a case worthy of censorship. Finally, one offense punished by the ancient censors was negligent cultivation of land (because misuse of the land is, in an almost literal sense, unpatriotic),[4] therefore a contemporary censor might punish the polluters of air and water. Given

[2] Livy, *The Early History of Rome*, translated by Aubrey de Selincourt (Baltimore: Penguin Books, 1960), p. 262.
[3] See my essay, "On Violence and Legitimacy," *Yale Law Journal*, vol. 79 (1970) pp. 623-646.
[4] Theodor Mommsen, *History of Rome*, vol. II (Glencoe: Free Press, n.d.), p. 64.

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all of these crimes against the polity, why does obscenity, in Berns's case, occupy not merely the center but the *whole* of the stage?

The question is far from captious, for it raises the issue of the status of the United States as a political community. Civic virtue was never universal in America and our common moral standards were always limited in extent. The mechanistic liberals who shaped our institutions set out to make civic virtue unnecessary to the realization of what they took to be the common good, faithful to the doctrine that private mischiefs may be public benefits if rightly channelled. And mass, industrial society makes that virtue difficult at best. Ruled by great abstractions, men develop the morality of serfs; the arts and sciences are guilty only of being no better than their fellow citizens—fawning, secretly resentful, fearfully ambitious, and irresponsible.

THAT is not the whole story, of course; there is another, better side to Americans and American life. It is true enough, however, to justify the fear that whatever "laws of common decency" we may have had, have been slipping into oblivion. This is nothing new; it is as old as the historical pattern which is the source of the fear. There have been battles to defend each "line" of morality; the censorialism of Prohibition is only the most obvious example. And naturally, each defeat made subsequent defenses more desperate. The sexual code seems, to many, to be the last bastion. (It is suggestive that lewdness and obscenity were the last of the crimes which Blackstone classified as "offenses against God and religion.")[5] It is hardly to be wondered at, then, if the sexual code acquires a disproportionate standing in the moral concerns of many.[6]

The very general decay that is complained of, however, makes censorship an inappropriate remedy. It is a frequent defect of censorship, in fact, that men resort to it too late, and that shortcoming is especially likely in a society devoted to individualistic principles. Degeneracy becomes socially visible, emerging from underground, only when it has reason to expect a welcome. Certainly this is the case in relation to sexuality.

Our verbal sexual morals had become nothing more than cant

[5] William Blackstone, *Commentaries on the Laws of England: Of Public Wrongs,* adapted by Robert Malcolm Kerr (Boston: Beacon, 1962), pp. 60-61.

[6] When I was active in Slate, one of the predecessors of the New Left at Berkeley, many of us were shocked when we found that our statement that a female opponent was "immoral"—because she had broken a promise to us—was taken to mean that she was sexually promiscuous. That was years ago, and American moral sensitivity, despite the stridency of the times, has not grown much greater.

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some time ago for most Americans. Worse, they were a form of hypocrisy which discouraged respect for law. Students were told by college officials that dormitory regulations were necessary for the "image" of the institution, but that numerous ways existed by which sexual desire could be gratified without attacking those rules openly. Parents, whose conduct meshed badly with their admonitions, welcomed the second family automobile because it allowed them to overlook what they hesitated to condone. Our sexual morals were like the proverbial Mississippi voter who drank wet and voted dry, and with the same results in relation to the law.

I am not arguing the familiar and foolish liberal proposition that "unmasking" hypocrisy is a form of moral progress, nor am I denying Berns's contention that much of "liberated" art and literature is shameful. I am contending that the mask, once off, is difficult to replace, especially because the "laws of common decency" collapsed long *before* the "legislation that constituted their foundation." The statutes were not the foundation of anything; they were the means of penalizing exceptions to the "common law," the beliefs of the many. When that law lost its standing, the statutes could exist only so long as they were no more than a nuisance; on that basis, they could be restored, but that would not solve or even address Berns's problem. A verbal reaffirmation of the old code would bear no more relation to reality than Vichy did to France.

Moreover, censorship is a danger in the context of modern politics. The problem of guarding the guardians is not only perennial; it has become progressively more insoluble. Berns hardly helps matters by discussing the permissiveness of ancient tyranny in the text and relegating the censoriousness of modern totalitarianism to a footnote. The bureaucratic industrial state is not a *polis,* and though I would argue we should move toward the latter to the extent we can—that we should in a literal sense seek to recover politics—it is necessary to realize how different our current environment is. Modern liberal industrialism *has* become the analogue of ancient tyranny, by accident or design. The fact that most men are denied any genuine political or even public life creates a demand for, and requires society to provide, abundant private gratifications. But man is a political animal, and his apolitical existence leaves him with a gnawing sense of something missing, while modern society multiplies threats around him. Gratifications prove inadequate and lose their savor, and new, more elaborate or grosser pleasures are sought in turn; what else is to be expected in a society which dominantly thinks of freedom as the "absence of restraint" except a progression

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toward shamefulness? "Repressive desublimation," whether one accepts Marcuse's formulation or not, is part of our political reality.[7]

At the same time, however, those modern states which have set out to establish the empire of virtue inspire even less confidence. Even where there are "common values" there is great personal distance between rulers and ruled. The high justice, and with it, the high civic virtue of small states is impossible in great ones. Rulers cannot give me my due if they do not know me, and it is absurd to ask men to trust their rulers today with the extensive powers they once gave readily to men they knew.[8] Modern man is already asked, in clearly public matters, to accord government a trust that borders on credulity; it is too much and much too dangerous to ask him to extend the same trust over any extensive areas of private life. And it is more dangerous still to allow any power which touches the freedom of speech or the press. The *suspicious* aspect of the liberal creed, which feared and sought to limit power, is only made more necessary by the evident folly and failure of its positive faith.

In fact, the change from the censor to the critic reflects the change of our political world. The critic speaks to the social circle, where men are confident that their values are shared, in which they feel some element of personal importance and acquaintance with their fellows. The critic is, simply, the appointed guardian of the standards of the circle. Berns is right and the *Times* is wrong; at least in the short term, the critic cannot prevail because his power is limited by the circle to which he speaks. But that limitation reflects the fact that modern men, prudently, limit their allegiance and their trust.

I am not attempting to minimize the problem of which Berns speaks. Quite the contrary; the problem is real because it is part of the generally grim and decadent character of modern politics. But precisely because those politics are as base and as threatening as they are, it is necessary to beware of cures that may be worse than the disease. Moral standards are needed; civic virtue is required.

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[7] Herbert Marcuse, *One Dimensional Man* (Boston: Beacon, 1968).

[8] There were problems even in antiquity, despite a more favorable environment. Livy tells us that when Mamercus had a law passed limiting the term of the censors, saying that "it was not an acceptable thing to have the same people in control for so long over so many aspects of one's life," the censors octupled his tax and disfranchised him. Perhaps that is what gave pause to the patricians, who had originally opposed the law, for Livy tells us they came to be "aware . . . that individually they would all have to suffer the jurisdiction of the censors much more often . . . than they would have a chance of exercizing it. *op. cit.*, p. 279.

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Both, however, require construction as much or more than they do maintenance, and either may demand the remaking of modern society, not the tinkering of the censor.

In one area, however, censorship would be both safe and possibly helpful: the censorship of one's self. Artists, scientists, philosophers and intellectuals generally owe themselves and their fellow citizens the duty of gauging their utterances, works, and writings in terms of their likely impact on the life of man. There is no requirement that "all things be revealed" directly; as the greatest of teachers knew, parable and allusion will suffice for those "who have ears to hear." Oliver Wendell Holmes, Sr., to take only one of many American examples, found it possible to say "shocking" things in an idiom which did not affront respectability (or at least, not often; audiences read more carefully in those days, and at least one critic discerned "obscenity" in *Elsie Venner*). And Twain was even more a master of the art.[9]

There are, moreover, things which one should not say at all and research which one should not reveal in even the most guarded ways. The path of evil crosses the human highroad too often for some tools to be put into man's possession. Scientists need that admonition, for their record contains crimes greater than any that may be charged to obscenity (nor are the sins of philosophy due to salaciousness). There have been many who knew the necessity of that restraint. John Napier, the inventor of logarithms, fearful of the Spanish Armada, developed (then) terrible engines of war, but he suppressed his discoveries for reasons he summed up on his deathbed.

> For the ruin and overthrow of man there were too many devices already framed, which if he could make it fewer he would with all his might endeavor to do . . . (B)y any new conceit of his the number of them should never be increased.[10]

Liberalism's sunny faith that progress would make any invention safe and profitable helped destroy that attitude and that wisdom. And when darkness gathered on the horizon and progress became suspect, scientists—social and natural alike—contented themselves with the assertion that the "process" of discovery would guarantee that, sooner or later, someone would make the discovery any-

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[9] For a striking example, see "A Double-Barrelled Detective Story" in Charles Neider, ed., *The Complete Short Stories of Mark Twain* (Garden City: Doubleday, 1957), pp. 423-469.

[10] John Napier's views are cited from John U. Nef, *War and Human Progress* (Cambridge: Harvard University Press, 1952), p. 122.

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way. This is a dubious proposition and the more suspect because this "delusion of impotence" masks self-assertion; it justifies me in my desire to "get the credit," to win fame and eminence associated with the discovery of a new tool, a new weapon for man to turn against man. Even if true, however, it matters a good deal whether inventions are made sooner or later; and if the probable or likely impact is destructive, a moral man will hope that the event is delayed.

None of this, of course, solves the problem of an Einstein who finds himself faced with Nazism. But it is important to emphasize that, even in such a case, the decision to labor on weapons of destruction is a moral and political decision. The decision to write or not to write, to speak or remain silent, to portray or to leave hidden, is always a political decision to be judged by its impact on men. If truth is a "good in itself" and art is truly for "art's sake" neither needs a public revelation. That public expression is necessarily political, and sometimes of great import for good or ill. Art and science have dignity because they matter, and artists and scientists acquire dignity from that fact. But dignity, like liberty, involves discipline and constraint. Surely that is the vital lesson we owe our fellow citizens and each other in our shadowed times.

IV. MARSHALL COHEN

For classical liberalism, and for contemporary constitutional theory, freedom of speech and the press require far more than a mere absence of censorship. Contrary to Walter Berns' suggestion, the claims of liberalism in the last century went well beyond the Blackstonian conception and required freedom not only from prior restraint but from subsequent punishment, not only from governmental interference but from social pressure as well. Mill certainly did not suppose, as Berns characterizes him as supposing, that truth would inevitably prevail against the winds of doctrine. This is one reason why the protections he urged for speech and the press go well beyond Milton's call for an end to licensing.

If Mill did not think the triumph of truth inevitable he did think that truth was, in general, a boon to mankind, and that society should adopt those principles most congenial to its discovery, appreciation, and dissemination. Mill therefore urged that mature civilizations adopt the principles of free speech and discussion and it is clear that these principles are more crucial still where dem-

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ocratic regimes are in question. Nothing in his argument suggests that particular instances of speech may not be harmful (or that artistic expressions inevitably benefit society) but only that, in the case of speech, society's best interests are served by leaving it free. It is better to suffer the harms this policy permits than to compromise the principle and prohibit various, often vaguely specified, types of speech. This is precisely what Justice Black has in mind when he says that the Constitution does all the balancing that is necessary in the First Amendment area. And the wisdom of this approach is made abundantly clear by the history of Justice Black's First Amendment opinions.

Despite this fact, arguments of the sort Mill and Black make are not inevitably persuasive. If particular instances of speech do, in fact, cause harm, it may be possible to specify kinds of speech that could profitably be prohibited. In fact, of course, Mill himself excludes speech that incites violence in volatile circumstances, and the Supreme Court is willing to prohibit, at very least, speech that constitutes a "clear and present danger" of certain kinds of evils. And these are by no means the only candidates for exclusion. Mill's discussion conspicuously lacks any consideration of speech that interferes with privacy or with a fair trial; we hear nothing of the solicitation of crimes or of complicity by encouragement; no mention is made of perjury, misrepresentation, false advertising, or of libel which, in some of its forms, few besides Justice Black think protected by the First Amendment. In all these cases it is possible to mention a harm that is often enough, or inevitably, the consequence of the type of speech in question and it is reasonable to argue that we may enjoy the benefits free speech is intended to secure without enduring these evils. In the case of obscenity, however, I do not think that this kind of argument is persuasive. The concept of obscenity is a dangerously vague one to play so important a role in criminal legislation; the attempt to control pornography and obscenity, in addition to requiring an indeterminate sacrifice of general principle, endows the criminal authorities with an undesirable degree of discretion, especially unfortunate in so sensitive an area; and it does all this to protect us from harms that are generally exaggerated and often simply fabricated.

WHAT, then, are these harms? I confess that I find little merit in Berns' specific suggestions; indeed, they are among the most implausible known to me. For there is little reason to believe that pornographic literature rouses men to such transports of lust that

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they will fling themselves upon the body politic. (Is Denmark a case in point?) In general, I am impressed by the argument of Tocqueville and Mill that modern democracies are biddable and conformist, and am skeptical of the classical argument that democracies are by nature unruly and self-indulgent. Insofar as pornographic literature and sexual permissiveness have any effect, it seems as likely to be of the kind that Marcuse detects—an increased willingness to accept "the system"—as it is to be of the kind that Berns fears—the rape of republican institutions. The harms Berns has in mind are too remote and implausible to provide a reasonable ground for restraining speech, and it is worth remembering that Berns is interested in restraining not only obscenity but, like Marcuse, vicious speech quite generally. Neither of these extravagant men provides the kind of guidance we need in the delicate area of First Amendment freedoms.

If the argument from sexual permissiveness to political debauchery is unpersuasive, so is the far more plausible argument that finds some connection between pornographic representations and various other kinds of undesirable, and even criminal, behavior. It is not enough to say as some say, on principle, that we should content ourselves with punishing criminal acts and not try to reach the states, conditions, and actions that give rise to them. There is nothing in principle objectionable about a prohibition on drunken driving. But the analogy between drunken driving and randy reading is tenuous indeed. Self-abuse is not to be compared to death on the highways and it is questionable whether the frequency of sex crimes is significantly increased by the availability of pornography (recent Danish experience suggests the opposite). This is not to say that in particular cases some connection cannot be established. We know what Paolo and Francesca were reading when they decided to read no more that day. But it is possible to believe that in such cases some other stimulus would have produced the same result and to doubt, in any case, whether preventing the evils in question justifies the restraints that would be required to do so. The case may be different when we consider the pornography of violence. For it has been claimed that Suetonius and Sade are responsible for the murder of children (and if recent reports from the White House are correct, John Wayne movies may have to be added to the list). If literature is a crucial factor here, and if significant connections between the circulation of violent representations and violent crimes can be established, a case might be made for restraint in this area. After all, what we need is less killing, not less masturbating and fornicating. In the end, I am inclined to think it is the moral atmosphere it creates, not

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the criminal actions it causes, that explains the animus against pornography and obscenity.

Lord Devlin has suggested that morality is so intimately connected with society that a threat to a society's morality constitutes a threat to its survival, a threat against which it must obviously protect itself. Even if one does not make so extreme a claim as this, however, it is plausible to argue that society has a right to protect its moral environment, and the institutions that embody its moral principles, against destruction, and to use the techniques of the criminal law to do so. There is much truth in these claims, which are too complex to discuss on this occasion. But some caveats must be entered, especially as they bear on the immediate issue. For the attempt to encourage sexual purity by controlling sexual thoughts and fantasies (even when they are consummated by a honeymoon in the hand) does constitute an attempt at thought control; and the attempt to preserve the institutions of marriage and the family by controlling pornographic publications does constitute an attempt to control freedom of speech and the press. It is not at all clear what considerations are supposed to exempt these thoughts from the protections, and these institutions from the irreverence and criticism, that are expected in other cases. The attempt to escape the burden of specifying these considerations by arguing that obscene speech and pornographic publications are "without redeeming social value" is unacceptable. The President may find the term 'smut' adequate to his purposes but the fact is that there are many kinds of speech and writing covered even by the more precise terms, 'obscene' and 'pornographic.' 'Pornography' denotes, among other things, a literary genre that needn't employ obscene language (such abstinence is crucial to the artistic effect of Musset's *Gamiani* and of Cleland's *Fanny Hill*) and it is a genre that can claim distinctive and impressive artistic achievements. Besides, as Berns himself notices, pornography is not only sexually arousing it is morally and politically tendentious. (Pornography is "kinetic" on both of Stephen Dedalus' criteria, which contrary to Stephen and the entire tradition going back to Kant and Schopenhauer, does not render its nature "improper" or unartistic.) It is no accident that the earliest examples of the genre take dialogue form, and it has been well observed that Sade may be read as a reply to Dante, *Fanny Hill* as a reply to *Pamela*. The genre itself makes a moral point, and as David Foxon has indicated, specific works have exposed the hypocrisy of society and the falsity of appearances, even as they have

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attacked romantic love, the family, the clergy, repressive morality and religion itself. No doubt this is precisely why some may wish to suppress them but it is one of our guiding principles, and a sound one, that these institutions, though they may be protected in various ways, are not to be immune from the effects of moral criticism and artistic interpretation. If our moral principles, or the institutions they embody, cannot survive this kind of criticism and awareness, then they should not survive. For in that case we are faced not with unacceptable injury, but with justifiable change.

Of course, all pornography and obscenity does not constitute an artistic achievement or amount to "the advocacy of an idea." It may have no "redeeming social importance." The Supreme Court has held that, when it does not, such speech and writing qualifies as legally obscene, and it is not afforded constitutional protection. The Supreme Court's attempt to devise legally manageable standards to distinguish what is ordinarily taken to be obscene from what is obscene in the legal sense has been woefully inadequate. And Justice Stewart's Augustinian admission that although he knows hard-core pornography when he sees it, he cannot define it, though ingratiating, does not provide a satisfactory guide to the law of the land. If the Court cannot devise adequate legal standards in this area, and it seems unlikely that it can, I believe that it ought to take the liberal course. Certainly the feeble arguments it offers for the view that obscene speech is not speech in the constitutional sense provide no serious obstacle to such a solution.

It does not follow from what I have urged that no concessions can be made to the section of the public that finds pornographic representations disgusting and offensive, and here I think that Richard Kuh in *Foolish Figleaves?* makes some sensible suggestions. Indeed, two of his proposed statutes are, I think, substantially acceptable on liberal principles and to Court opinion as well. For it is one thing to say that the publication or sale of obscene materials ought to be free and another to say that these materials may be forced upon people. In *Redrup v. New York* the Court indicates that it will not protect "an assault on individual privacy by a publication in a manner so offensive as to make it impossible for unwilling individuals to avoid exposure to it." The Court rests the argument on the proper ground, the invasion of privacy, and the control of public nuisances, insofar as the notion of a public nuisance is understood to require such an invasion of privacy, is perfectly acceptable. Such an approach would permit the prevention of "offensive public displays"

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of the kind that Kuh seeks to control. Times Square can go. It is possible, too, that some proper constitutional ground can be found for prohibiting sales to minors. In his statement rejecting the report of the Commission on Obscenity and Pornography, President Nixon suggested a return to the view that pornography must be denied to adults because leaving it free will have indirect effects on minors. But this approach is of dubious constitutionality (*Butler v. Michigan*) and despite the obscurities that attend the notion of obscenity we should be able to manage in the case of pornography the kind of prohibitions that we are able to manage, tolerably well, in the case of intoxicating liquors.

Kuh seems to feel less confident about his call for a third type of statute and I think that this lack of confidence is well merited. For he proposes a complete ban on nudity and obscenity in live performances and films—no experiments by the Netherlands Dance Theater, no *Flaming Creatures,* and no Lenny Bruce (whose moral psychology and phenomenology of shame seem to me far more penetrating and sweet-tempered than that of Berns). This extreme limitation on freedom, which I find unsupported by any clear showing of harm, and without any sound constitutional basis, is relaxed for the case of printed matter, on which I shall concentrate.

In the case of printed matter Kuh proposes that the intention "to exploit commercially a morbid interest" in sexual and other lurid detail shall constitute a criminal offense. What then, will be accomplished by punishing, not only public nuisances, but also any attempt to exploit pornography commercially? Because this part of Kuh's proposed statute imposes no restrictions on the private possession of pornography, or on sales to adults where those sales do not involve "commercial exploitation," the harm to be eliminated will be the increase in distribution accomplished by commercial exploitation, as opposed to that which would be achieved by—well, what? Orthodox capitalistic sales techniques? If, as a matter of constitutional right, pornographic materials may be bought and sold, it is difficult to see what constitutional principle permits the government to abridge this right where "commercial exploitation" is involved. Besides, to gain this advantage, it is necessary to become involved once again, not only in drawing the distinction between a "morbid" and a normal or healthy interest in sex, but also in making the distinction between "commercial exploitation" and normal or healthy sales techniques. All this raises, most acutely, difficulties about unconstitutional vagueness, and invites the most extreme exercise (and abuse) of discretion on the part of the criminal au-

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thorities. On balance, the advantage, dubious in itself, seems hardly worth the risks involved.

Of course, one may feel, as I expect that Berns does, that a central, perhaps that the most important, function of the criminal law is to express the community's judgment about various kinds of conduct and to condemn those it deplores. It would, therefore, be surprising if someone with principles like Berns' were willing to endorse Kuh's proposals in this area. For they acquiesce in the circulation of pornography among adults (if it is sold in a seemly fashion) and thereby, in addition to permitting a possibly fatal self-indulgence, fail to denounce the evil to which Berns and others object. They settle for an indirect and probably fruitless attempt to contain that evil and denounce, if they denounce anything at all, a mode of commerce to which the community does not, in general, take exception. Far from it.

I would confine myself to prohibiting public nuisances by law and hope that other institutions could raise the level of literary taste. Surely a liberal society is capable of distinguishing between art and trash (and, I should think, of seeing that this is not the distinction between "Mrs. Warren's Profession" and *Fanny Hill*). The circulation of pornography, even of hard-core pornography, does not undermine this distinction or anything else that is fundamental to our social arrangements. The same cannot be said for the interpretation of the First Amendment that Berns has been circulating for some years now. If widely accepted, it would constitute a far greater threat to the Republic than all the pornography now in print, here and in Denmark.

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Violence, pornography, and social science

JAMES Q. WILSON

To the extent that it has a philosophical basis, the case against censorship—at least in this country—typically rests on a utilitarian argument. Indeed, it is a leading utilitarian—John Stuart Mill—who is often cited in opposition to censorship in any form. Though Mill, in his essay *On Liberty*, wrote chiefly of the censorship of political and religious speaking and writing, his position can easily—I should say, must inevitably—be extended to the arts and amusements. "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will," Mill wrote, "is to prevent harm to others." This principle applies not only to freedom of expression but to "liberty of tastes and pursuits." In this latter realm Oliver Wendell Holmes gave the utilitarian position its most memorable practical expression: "No woman was ever seduced by a book." Though many people echo this as an article of faith, it is of course an empirical statement. The truth or falsity of such factual, consequential statements is the ultimate basis of the utilitarian argument.

If the question of censorship rests on the appraisal of such consequences, then one might suppose that social science should be

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an important source of information about what public policies are necessary and defensible. Careful research might, in principle, reveal the effect of the dissemination of certain images or words; if harm is to be the criterion, then a showing of such an effect would be a necessary—but not sufficient—condition for justifying the exercise of some form of legal restraint. (It is an important but little-remarked feature of utilitarianism that it can as easily justify the most extreme form of social control as it can justify the most perfect liberty; everything depends on consequences.) Of course, disutility is not the only grounds one can imagine for censorship; but in the United States at least (and perhaps in most Western nations) it is almost invariably the only one employed—or, more accurately, the claim that no positive harm will flow from the free circulation of any visual or written material is the most common argument made *against* censorship.

Such, at least, are the philosophical premises of two presidential commissions, each of which has relied on extensive social science research to support quite different positions on the restraint of free communication. One, the National Commission on the Causes and Prevention of Violence, found that "the preponderance of available research evidence strongly suggests . . . that violence in television programs can and does have adverse effects upon audiences—particularly child audiences." The other, the Commission on Obscenity and Pornography, found that "extensive empirical investigation . . . provides no evidence that exposure to or use of explicit sexual materials plays a significant role in the causation of social or individual harms such as crime, delinquency, sexual or nonsexual deviancy or severe disturbances."

On the basis of these findings, the two Commissions naturally made very different policy recommendations. The Violence Commission recommended that television broadcasters abandon "children's cartoons containing serious, non-comic violence," that the time devoted to broadcasting programs containing violent episodes be reduced, that the "basic context in which violence is presented" be altered, that there be more support for educational television, that the "validity" of the motion picture rating system ("G," "X," etc.) be evaluated as it applies to violent films, and that there be "further research."[1] The Obscenity Commission, by contrast, argued

[1] Lest one assume that the verbal urgings of the Violence Commission to the television industry bear no taint of censorship, bear in mind that television (unlike the publishing of books, pure or impure) is a governmentally-licensed and regulated industry. Were the Federal Communications Commission to indicate that the renewal of these licenses was dependent on the broadcaster's

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that the "spirit and letter of our Constitution tells us that Government should not interfere with these rights [for each individual to decide for himself what to see or read] unless a clear threat of harm makes that course imperative." Accordingly, the Commission recommends that "federal, state and local legislation prohibiting the sale, exhibition, or distribution of sexual materials to consenting adults be repealed," but that legislation preventing the "commercial distribution or display for sale" of certain sexual materials to young persons and prohibiting the "public display of sexually explicit pictorial materials" be enacted. Finally, it, too, called for more research.

"Violence" and "sexuality"

The quite different recommendations of the two commissions—one calling for more restraint (which, if taken seriously by the FCC, can only mean more constraint), the other calling for less—might be the result, not of different empirical findings, but of different judgments about similar findings. One might argue that even a slight chance of people becoming more violent as a result of television warrants restraint, whereas even a significant chance of people becoming more "sexual" as a result of looking at obscene books warrants no restraint. Violence is harmful; sexuality is not; therefore, media that might encourage the former should be regulated whereas media that certainly encourage the latter should not.

But saying that violence is harmful and sexuality is not assumes a clear understanding of what we mean by "violence" and "sexuality." Neither Commission displayed such clarity on this score. War is violent, but the Violence Commission did not call for abandoning news programs about Viet Nam. Football and hockey not only appear violent to the viewer, but they are in fact violent for the participant; in contrast to westerns, people actually get hurt in televised

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progress in changing television programs to reduce "violence," you can be certain there would be less violence on television. Without new legislation of any kind, the federal government today can exercise, should it act on the views of the Violence Commission, a "chilling effect" on the content of television programs. It already exercises that chilling effect with respect to many other matters—the "fairness doctrine," for example, imposes heavy costs on broadcasters who give over programs to one side of a controversial issue by requiring them to provide equivalent time to the other side. (No magazine, book, or film, by contrast, is under any such obligation to be "fair.") Nor is the FCC the only potential source of constraint. Recently the Foundation to Improve Television brought suit to prevent a Washington TV station from broadcasting "The Wild, Wild West" before 10 P.M. on the grounds that the evidence of the harmful effects of violence means that the program "violates the constitutional rights of child viewers."

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sports programs, and the hurt cannot even be justified by a higher cause (he was a "bad guy" or he "did it for his country"). By some standards (not mine), it is the most shocking form of violence, done merely for sport or fun. Yet the Commission passed it by without censure.

As for sexuality, it cannot be utterly benign, for the Obscenity Commission wants to make it illegal for young persons to purchase pornography. On the one hand, the Commission found "no evidence" that exposure to erotica "adversely affects character or moral attitudes"; on the other hand, the Commission recommends legislation that will "aid parents in controlling the access of their children to [sexual] materials during their formative years." (Two Commission members—interestingly, the only two sociologists on it—were at least consistent: they wanted no legal restrictions at all, whether for juveniles or adults.)

Moreover, some erotic materials are violent and some forms of violence are sexual. In these cases, which element is to be decisive? The Violence Commission would presumably discourage the explicit portrayal of a rape in a film because it is violent, while the Obscenity Commission would presumably permit it because it is sexual. And what of "violence" that the recipient finds not only bearable but even enjoyable? Are sado-masochistic acts violent or nonviolent?

From hypotheses to conclusions

Clarity on these and other matters was not enhanced by the kind of social science research with which the Commissions supplied themselves or the uses to which they put it. In both cases the central defect was the failure or inability to select an appropriate definition of the kind of effects either violence or erotica in the media might produce.

The great bulk of the research relied upon by the Violence Commission consisted of laboratory studies, usually involving young children or college students, in which "aggression" or "violence" was defined (in the case of the young children) as a willingness to engage in harmless play activities involving physical force used on inanimate objects or (in the case of the college students) as a greater willingness to administer ostensible electric shocks to other subjects under circumstances such that the student had no choice *whether* to administer the "shocks" but only how many or with what severity.

On the basis of these laboratory experiments, plus a few other

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studies of lesser significance, the Task Force on Mass Media and Violence concluded:

> Persons who have been effectively socialized into the norms for violence contained in the television world of violence would behave in the following manner:
> a) They would probably resolve conflict by the use of violence.
> b) They would probably use violence as a means to obtain desired ends.
> c) They would probably passively observe violence between others.
> d) They would not be likely to sanction or punish other's use of violence.
> e) They would probably use a weapon when engaging in violence.
> f) If they were policemen, they would be likely to meet violence with violence, often escalating its level.

To be sure, the Task Force does not say any of this has been proved; these are described as "hypotheses" but as ones which are "clearly consistent with and suggested by established research findings and by the most informed social science thinking about the long-run effects of exposure to mass media portrayals of violence." And as for short-run effects, the Task Force is prepared to assert conclusions, not merely hypotheses:

> Audiences who have learned violent behavior from the media are likely to exhibit that learning (i.e., engage in acts of violence) if they encounter a situation similar to the portrayal situation, expect to be rewarded for violent behavior, or do not observe disapproving reactions to the portrayed aggression from another person in the viewing situation.

The Violence Commission as a whole put the matter in simpler language: "Violence in television programs can and does have adverse effects upon audiences—particularly child audiences."

The blunt truth is there is almost no scientific evidence whatsoever to support the conclusions of either the Task Force or the Commission. Neither the Task Force nor the Commission gathered any evidence about whether children learn, in the short run or the long run, "violent behavior"—*unless what one means by "violent behavior" is a willingness to engage in certain forms of harmless play.*

Bobo dolls and electric shocks

Consider what is perhaps the largest single series of experimental studies, those done by Professor Albert Bandura of Stanford University. One experiment is typical. Nursery school children watched an adult, sometimes in person, sometimes on film, hit and kick a large inflated doll (a "Bobo Doll"). Afterwards the children

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were subjected to mild forms of frustration (e.g., having favored toys taken away from them). Then they were observed at play in a room filled with toys, among them Bobo Dolls. Children who had previously watched the adult hit or kick the doll were more likely to hit and kick their Bobo Dolls.

Now, it if were in the public interest to protect Bobo Dolls from being hit by children encouraged to play with them, and if hitting Bobo Dolls was a regular feature of television, then admonishing the media to refrain from such features might be in order. Of course this is not what the Commission had in mind. But what evidence is there from the Bandura experiments that aggression against dolls is ever transferred into aggression against people or even that the children in the experiments define hitting a doll as "aggression?" In the Bandura experiments, there is no evidence at all on either score. Richard Goranson, a consultant to the Task Force, faced up to this problem in his essay. He noted that the definition of "aggression" is crucial to the meaning of the experiments. For some, aggression means "the intentional inflicting of pain or injury on another person." Clearly the Bandura experiments do not measure aggression thus defined. Indeed, it is not even necessary to have laboratory experiments to induce in children the kind of "aggression" Bandura observed—all that is necessary is to give them a football on a Saturday afternoon in October and they will supply plenty of "aggression." Bandura argues that his definition of "aggression"—performing certain kinds of physical acts, such as hitting or kicking—is appropriate even though it is directed at nonhuman objects, but it is hard to imagine why it *should* be appropriate unless one can show that harmless play activity will later be transferred to interpersonal situations. But this is precisely what has not been shown.

The experiments that do seem to measure aggression in the sense of intentionally harming others are those of Leonard Berkowitz and R. H. Walters using electric shocks. The experiments vary in their conduct and the results are not entirely consistent, but one, by Walters, suggests the general idea. Subjects were told they were participating in a study of how learning was affected by punishment. Each was told to give "electric shocks" at whatever level he wished to another subject (in reality, a confederate of the experimenter who only simulated the effects of shock, every time the "learner" made a mistake. Then the subjects were shown either a film of a knife fight (taken from *West Side Story*) or a nonviolent film. The "learning" experiment was then repeated. This time, subjects who had watched the fight scene gave slightly stronger shocks (about half a setting

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higher) than those who had watched the nonviolent film. Here, one might argue, is a clear case of media-induced "aggression." But there are at least two caveats: it is by no means clear that the subjects defined what they were doing as "violent"; they were told, after all, they were trying to make people learn better by punishing them for wrong answers (a not uncommon pedagogical technique) and that it was legitimate to do so. Furthermore, no subject could decide (unless he wanted to drop out of the experiment) not to give any shocks; he could only decide at what severity to administer them.

Very few studies have attempted to measure the incidence of genuinely aggressive behavior among persons in real-life settings and to estimate the association, if any, with exposure to media violence. The obstacles in the way of such a study are obvious—the lack of an opportunity for constant observation, the inability to control the viewing habits of respondents, and so forth. At least one such study has been done, however. Seymour Feschback of the University of California at Los Angeles found an opportunity to use laboratory-like controls in a real-world situation. Boys attending seven residential schools in California were divided into two groups—one was allowed to watch in their cottages only television programs drawn from a list of those featuring violence (cowboy, spy, detective, police, and war shows) while the other was allowed to watch only programs on a list containing nonviolent programs. They were required to watch a minimum of six to fourteen hours of TV a week for six weeks. The boys were told that the purpose was to get their ratings of the programs. Personality tests were administered before and after. In addition, the teachers and cottage supervisors filled out daily reports on the boys' behavior at play and in class. Boys who had watched a steady diet of "violent" television displayed no more signs of violent or aggressive behavior than those who had watched only nonviolent programs. On only one measure did a difference appear—boys watching nonviolent programs, when asked to make up stories, made up fewer stories in which fighting took place.

Feschback has been identified with the so-called "catharsis" hypothesis, i.e., that observing media violence enables a person to discharge or vicariously satisfy such violent tendencies as he may have. Much of the laboratory experimentation and a good deal of critical commentary has been devoted to disproving this hypothesis, and any fair summary of the state of the art would have to conclude that there is as little evidence that media violence exercises a cathartic effect as there is that it exercises an arousal effect. But the criticisms of the catharsis view have tended to neglect the larger

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finding of the Feschback studies—namely, that the media's power to induce aggression, reasonably defined, is unproved.

Begging the questions

A short review cannot treat all the issues raised by the Violence Commission's hasty and unsupported acceptance of the most far-fetched interpretations of the aggression experiments. Perhaps the most distressing aspect of the entire enterprise is the tone of advocacy that pervades some of the chapters written by social scientists who seem more interested in finding any data, however badly interpreted, that will support their policy conclusions. Critics of these studies are dismissed in one place as "apologists for the media." Interlaced between paragraphs recounting experiments are ones of pure polemic in which the substantive arguments are advanced by asking rhetorical questions. For example, an account of a child who hanged himself apparently trying to imitate Batman leaping through the air moves Professor Alberta Seigel of Stanford to ask, "In what sense is television 'responsible' for this child's violent death?" No answer is offered to this rhetorical question, nor is any indication given of what one would do with any conceivable answer (perhaps ban costumed figures, from Peter Pan to Superman, from flying on television?).

Repeatedly the argument is made that television "teaches," and that to ignore this fact is perilous. After all, advertisers do spend millions on soap commercials because they hope viewers will buy more of their soap; broadcasters do spend millions on violent television programs apparently because they think violence also "sells." If viewers "learn" to buy Oxydol, why shouldn't we expect them to "learn" violence?

But rhetorical queries and easy analogies beg all the interesting questions. There can be little doubt that television has a profound influence on our life and that we learn much, for better or for worse, from it. The crucial question is to specify the conditions under which something is learned and that "something" is then acted upon. It is interesting that neither the Violence Commission, nor the Kerner Commission before it, tried seriously to answer the question of whether TV broadcasts of an urban riot stimulated persons in the same city to join in, and aroused persons in other cities to start one of their own. (Indeed, the Kerner Commission dodged the question even though it was explicitly put to it by the President of the United States.) I do not pretend to know the answer to the question, though

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a plausible conjecture is that portraying in exciting terms actions by real people who are described as outraged by their grievances is more likely to effect behavior than fictional portrayals of imaginary events or obviously staged games. All the interesting variables—the degree of legitimacy attached to the act, the reward or penalty that might be expected from committing it, the opportunity for becoming a participant, the subjective definition of the act itself—are precisely the ones that most of the laboratory studies leave out of account. They cannot be brought back into account with analogies between selling soap and selling violence.[2]

Erotic effects

The Commission on Obscenity, in finding that obscenity had no adverse effects on users, did not rely (as did the Violence Commission) on existing research; instead, it contracted for its own—ten volumes worth. These volumes (the "Technical Reports") are not yet available, and thus a review of these studies must depend for now on the summary of them given in the Commission report itself and especially in the report of the "Effects Panel" to the Commission. Perhaps because the Commission fostered new research, perhaps because the Effects Panel included two respected sociologists, the central question of how one defines and measures "effects" was given more serious and thoughtful attention by the Obscenity Commission than by the Violence Commission. Three kinds of effects of erotica were examined—on the incidence of sex offenses in the nation as a whole, on the difference (if any) between sex offenders and non-offenders in their consumption of erotica, and on the attitudes and behavior of persons exposed to erotica in experimental or laboratory situations.

The research methods employed included opinion surveys that asked people to recall their exposure to erotica and to report on their sexual behavior and attitudes; comparisons of sex offenders and "matched" groups of non-offenders with respect to their use of erotica; and controlled experiments in which volunteers, usually college students or married couples, were asked to peruse erotic books and films for periods ranging from a single hour-long session to daily sessions of 90 minutes for three weeks. There was little use of clinical studies (e.g., the psychoanalysts' reports) or police and probation officer experiences (e.g., the frequency with which erotic ma-

[2] For a comprehensive and dispassionate review of studies of media effects, see the chapter by Professor Walter Weiss in *The Handbook of Social Psychology*, 2nd ed., vol. V.

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terials are found in the possession of persons arrested for sexual or violent offenses). No studies were done of children.

By these methods, the Commission concluded that exposure to erotica does produce sexual arousal in varying degrees among both men and women, especially among younger, college-educated persons who are nonreligious and sexually experienced; that some persons briefly change their sexual behavior after exposure to erotica but that most do not; that attitudes toward sex and morality do not change significantly after experimental exposure to erotica; that delinquent and nondelinquent youth have been exposed about equally to erotica; that reported sex offenses in Copenhagen decreased coincident with the repeal of anti-obscenity statutes; and that recent changes in arrests for sex offenses in the United States show no clear pattern—some, as for forcible rape, have gone up, while others have gone down at a time when obscenity has become much more readily available.

The Effects Panel acknowledges that there are limitations to these findings. Three are of special importance—long-term effects could not be investigated by a Commission with only a two-year existence, there were almost no studies of the effects on children, and the behavior of volunteer (i.e., self-selected) subjects in experiments cannot be generalized to any known population. Despite these limitations, however, the Effects Panel felt confident in concluding that if a case against pornography is to be made, "it will have to be made on grounds other than demonstrated effects of a damaging personal or social nature." Taking the findings as a whole, "no dangerous effects have been demonstrated on any of the populations which were studied."

Dissents to these findings were filed by three commission members. Two commissioners wrote a detailed critique questioning the reliability and interpretation of the empirical studies; unfortunately, the issues raised cannot be resolved until the full Technical Reports become publicly available. One dissent, by Charles H. Keating, Jr., the head of Citizens for a Decent Literature, Inc., and the sole appointee of President Nixon to the Commission, is an intemperate, unpleasantly *ad hominem* creed in which interesting and perhaps important objections are frequently obscured by a ranting tone.

An unsettled matter

For many persons, the social science findings endorsed by a majority of the Commission's members will settle the matter, especially

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since any effort to maintain even the much-weakened anti-obscenity statutes that now survive requires one to support the proposition, abhorrent to many, that the law may rightly proscribe the distribution of certain kinds of books and pictures. Perhaps it is this that leads some to adopt apparently different standards by which to evaluate the effects of obscenity as opposed to violence. Professor Otto Larsen, for example, served as a member of both the Obscenity Commission and as a consultant to the Media Task Force of the Violence Commission. In his former capacity, he finds no justification for any restriction whatsoever on the sale or display of obscenity to adults or to children, even though the Technical Reports contain almost no experimental or clinical studies of the effects of obscenity on children and despite the fact that most Americans no doubt find the display of obscenity in public places to unwitting parties quite objectionable. In his latter capacity, he submitted a paper to the Violence Commission that concluded that laboratory research "mounts a strong indictment of media performance" with respect to the portrayal of violence and that while the present state of knowledge leaves something to be desired, "enough is known" to be sure that we are running "grave risks" in a policy of the "indiscriminate use of violence." And this despite the largely irrelevant, sometimes trivial findings of research on media violence. The reason for the apparently different standards of judgment may be that to control obscenity "books" must be "censored," while to control violence it is only necessary that the "media" be "regulated." (Professors publish books; they rarely own TV stations.) Or perhaps the argument is that, while the contemplation of the obscene may produce many effects, they are not particularly harmful, whereas exposure to portrayals of violence may produce a few effects which are very harmful. Stated another way, the expected disutility of even a slight risk of a great harm (watching violence) is more serious than a substantial risk of a trivial harm (reading obscenity).

The question, then, is whether the harm from obscenity is trivial or great. On this question, the findings of the Commission are not nearly so conclusive as they are made out to be—provided one adopts a proper measure of "harm." If by harm one means the probability of committing a rape, then it is not surprising that exposure to erotica does not "cause" the act. Criminal actions generally, as the Effects Panel points out, are the product of many influences—social class, peer group relationships, intelligence, early family experiences, and the like. As for national rates of sex crimes, these vary enormously with the changing propensity to report sexual assaults and

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provide no reliable measure of an "effect" which can be correlated with the availability of erotica, even assuming that such availability could itself be measured. (The majority of the Commission believe that the study of sex crimes in Copenhagen satisfactorily controlled for the propensity to report, but the minority interprets the same data as showing that certain kinds of crimes did not decrease at all with the legalization of obscenity and that changes in other crime rates can be explained by a decreased willingness to call the police. Not having the Copenhagen study available, I can offer no judgment as to who is correct in this.)

The laboratory experiments provide perhaps the weakest evidence. Though such experiments have on occasion provided revealing insights into human behavior, the rigor with which they are conducted is purchased at the price of unreality. One cannot simulate in the laboratory the existence or nonexistence of a life-long exposure to or preoccupation with obscenity, any more than one can simulate a life-long exposure to racist or radical opinions. Imagine what one would think of an experiment in which volunteer college students were exposed, for an hour a day for three weeks, to the *Protocols of the Elders of Zion, Mein Kampf,* and an apology for slavery. No one would suppose that more than small and transient changes in behavior towards Jews and blacks, if any changes at all, would occur. Similarly, we should not be surprised that no enduring changes in sexual behavior and attitudes result from equivalent exposure to erotica, any more than we should have been surprised to learn from Professor Feschback that exposure to television violence for a few weeks caused no important changes in the behavior of young boys.

A more revealing experiment would be to compare the attitudes and behavior of a group of children, reared in a community with easy and frequent access to erotica (or media violence, or whatever) to those of a group, carefully matched in all other respects, reared in a community with no access, or only occasional and furtive access, to the obscene (or the violent). Obviously, such an experiment would have to last over many years—perhaps two generations, in order to control for prior parental attitudes—and the subjects would have to be carefully monitored to insure that experimental conditions were not violated by, for example, moving to another town or taking frequent trips to New York City to patronize the book stores on 42nd Street. Just as obviously, such an experiment is utterly absurd even to contemplate; no one, fortunately, can control human lives to that degree in this society or perhaps in any other.

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The nearest approximation to such a study would be a comparison of various cultures, some of which maintain a taboo against written and pictorial erotica and some of which do not, to discover what differences, if any, are thereby produced in the moral capacity, social vitality, and political stability of the societies. But even here inferences would be hard to draw—societies differing in one respect are likely to differ in many others as well, and settling upon some measure of effect (what is "moral capacity" anyway?) would be at best controversial and at worst impossible. It is interesting, however, to note that scholars whose job it is to compare cultures appear more willing than other social scientists to support the prohibition against obscenity (Arnold Toynbee, J. D. Unwin, and Pitirim Sorokin have been cited in this connection).

The limits of social science

In short, social science probably cannot answer the questions put to it by those who wish to rest the case for or against censorship on the proved effects of exposure to obscenity, media violence, scurrilous political literature, or whatever. In a society in which the obscene or the violent is not part of the regular literary diet of the young, the furtive or occasional consumption of such material may have little effect or be at best "one factor among many." In a society in which the obscene or the violent is everywhere on display, whether any given individual is or is not exposed to, say, a dirty book may be less important than the perceptions of life and morality he draws from a community obsessed with the carnal or bestial. In either case, there is not likely to be a significant correlation between *individual* exposure and *individual* attitudes or behavior. Even where the obscene is commonplace, there are likely to be important differences attributable to social class, intelligence, and family structure in the extent to which individuals display a preoccupation with that which is base or ignoble; and thus a social scientific study of the sources of anti-social behavior would probably conclude that these differences in class or family, being the correlates of behavior, were thus the "causes" of such behavior. It would have been as difficult for a social scientist in Nero's Rome to prove that a person who himself did not read erotic stone tablets was thereby benefited as it would have been for a social scientist in Cromwell's London to prove that a person who did read dirty books was thereby harmed; yet most historians would agree that the different attitudes toward public obscenity in Nero's Rome and Cromwell's

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London are not irrelevant to understanding these two very different societies.

Social science at its best seeks to show a relationship among two or more variables that cannot be attributed to chance or to intervening variables. Showing such relationships persuasively is easiest when the variables can be unambiguously defined (e.g., voting for a Democrat or Republican for president or earning over $10,000 a year) and the variables believed to have causal power are not highly intercorrelated with other variables (e.g., physical height tends to be independent of intelligence or social class, but education tends to be covariant with income, occupation, and race). When social scientists are asked to measure consequences in terms of a badly conceptualized or hard-to-measure "effect" of one among many highly interrelated "causes," all of which operate (if at all) over long periods of time, they tend to discover that there is no relationship or at best a weak and contingent one. This is one of the reasons, for example, for the controversy over human intelligence—the measures of intelligence are much disputed and the correlates of intelligence (race, class, family status, diet, or whatever) are themselves so intercorrelated as to make it hazardous to guess which one or which few variables, and in what temporal sequence, account for changes in I.Q. Or another example—social science studies of the effects of governmental interventions of a broad and diffuse nature (building "better schools" or running a "community action program" or enrolling students in Project Head Start) on various vague social objectives (improving education or strengthening the sense of community) are usually inconclusive and controversial.

The irony is that social science may be weakest in detecting the broadest and most fundamental changes in social values, precisely because they *are* broad and fundamental. Intuitively, it seems plausible that the media and other forces have contributed powerfully over the last generation to changes in popular attitudes about sexuality, political action, and perhaps even violence. But for lack of a control group it is unlikely that this will ever be proved scientifically. Social science may be better at showing the effects of various forces on relatively small and specially selected populations—for example, the effects of prison or childhood experiences on delinquents or the effects of various stimuli (including the media) on phobic persons.

If by its nature social science can be of little help on policy questions of the broader sort, to what mode of inquiry should a reasonable man turn to decide on the issue of censorship (or "regulation")? Reo Christenson has suggested that if social science cannot settle the

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matter on the grounds of consequences, the average American cannot be blamed for concluding that the views of the majority should prevail—and the majority clearly wants some form of restriction. A person who interprets the First Amendment solely by applying the "clear and present danger" test would of course find a majoritarian solution unacceptable; but it is by no means obvious that a showing of clear and present danger should be the test for all forms of writing and speech—the test was devised for gauging the reasonableness of limitations on *political* writing and speech.

Even the Obscenity Commission, despite its claim that it rests its recommendation for the abolition of restrictions on the distribution of obscenity to adults on the showing of no adverse effect, is not prepared to accept the full implications of that position. In the section immediately following that concerning effects, the Commission writes:

> Regardless of the effects of exposure, there is still a considerable amount of uneasiness about explicit sexual materials and their pervasiveness in our society. . . . [But] it is often overlooked that legal control on the availability of explicit sexual materials in not the only, or necessarily the most effective, method of dealing with these materials.

The Commission goes on to note, in generally approving tones, these other ways of "dealing" with erotica, such as industry self-regulation (among comic book publishers and broadcasters, for example) and the possibility of effective citizen action groups at the community level. But if obscenity is not harmful, on what grounds are such informal—and no doubt effective—controls over what we may read or see to be condoned? If no harm ensues, should not this extra-legal form of censorship be sharply criticized? Clearly, the Commission here—as with the public display of erotica and with its circulation among juveniles—is deferring, not to social science, but to popular feelings.

The ultimate criteria

It would be easy to dismiss deference to popular feelings by either proponents or opponents of censorship as an unworthy catering to mere prejudice or shallow opinion. And surely in the area of free speech properly conceived—as it relates to argument and instruction, rather than simply entertainment—no one (especially no professor) would want to take popular feelings at any moment as a decisive guide to what should be permissible. But in the absence of social science evidence that is conclusive, and confining our attention to matters of popular amusement, the deeply held convictions

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of citizens about the relationship between amusement and morality are by no means irrelevant or trivial. As Professor Harry M. Clor writes in *Obscenity and Public Morality:*

> People are influenced by what they think others believe and particularly by what they think are the common standards of the community. There are few individuals among us whose basic beliefs are the result of their own reasoning and whose moral opinions do not require the support of some stable public opinion. The free circulation of obscenity can, in time, lead many to the conclusion that there is nothing wrong with the values implicit in it—since their open promulgation is tolerated by the public. They will come to the conclusion that public standards have changed—or that there are no public standards. Private standards are hard put to withstand the effects of such an opinion.

I do not know whether the consequences for private standards of changed public standards will be as Clor predicts. I do know that I have seen no evidence to disprove his view and that many public policies—such as those against racial or sexual discrimination—are based in part precisely on the presumed educative force of law.

I happen to think (though I cannot prove it) that certain kinds of political speeches and writings do inestimable harm to our society—but I also believe that no one should be trusted with the power to decide which speeches and writings those are and thus which should or should not be allowed. I also think as a parent whose children watch Saturday morning cartoons and Sunday afternoon football on television that they are not in the slightest harmed by what they see; I cannot prove it, and I may be quite naive, but I cannot conceive of a study on this subject that I would find more persuasive than my own knowledge of my children's attitudes and behavior. I also do not want my children to be exposed to sex by way of easily available materials that portray what should be tender and private as base and brutal. I also confess to being quite uncertain as to what forms of legal restraint, if any, this requires. I know that they will encounter prurient materials furtively and that does not trouble me. Perhaps it should; or perhaps I should be worried that I cannot "prove" my belief that human character is, in the long run, affected not by occasional, furtive experiences but by whether society does or does not state that there is an important difference between the loathsome and the decent. I would, for example, want my government to say that race is not to be used as a basis for granting or denying access to public facilities even if social science could not show that such racial restrictions harm individual Negroes—indeed, even if social science could show that such restrictions *benefit* Negroes. A public commitment to equal opportu-

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nity and public opposition to disgusting racial distinctions should be made as a matter of right and propriety, whatever the immediate effects; I would also imagine that, over the long term, such public commitments would play a part in shaping individual attitudes in what I take to be a desirable direction.

The failure of the Violence Commission is that it relied, in the case of its task force on the media, on bad (or badly interpreted) social science; the weakness of the Obscenity Commission is that it relied too exclusively on social science research even though that research, within the limited framework of each study, was on the whole quite unexceptionable. The general circumstances under which public decisions can be made—or should be made—on the basis of social scientific findings is by no means clear. It is not hard to imagine issues on which such research could have depositive if not determinative weight and others on which it should have little or no weight. Regrettably, there has been of late a growing unwillingness to make such distinctions, but this may reflect not so much on excessive enthusiasm with the policy value of social science as a general inability to make distinctions of any kind.

In the cases of violence and obscenity, it is unlikely that social science can either show harmful effects or prove that there are no harmful effects. It is unlikely, in short, that considerations of utility or disutility can be governing. These are moral issues and ultimately all judgments about the acceptability of restrictions on various media will have to rest on political and philosophical considerations.

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Irving Kristol, Editor

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Paradoxes of health care

NATHAN GLAZER

Some intriguing questions—indeed, mysteries—seem to arise when one examines the field of health care. I intend to present some data—the best available, to my knowledge—bearing on three assumptions which most people accept as unquestionably valid: (1) that we need more health personnel, particularly doctors; (2) that the poor get less health care than the non-poor; (3) that the approaches to health to be found in England and Sweden are clearly superior to our own and should serve as a model for us. I then propose to raise a more general question about the cultural differences among groups as a neglected problem in the assessment of health care.

I

One reads everywhere about shortages of doctors, nurses, hospital personnel, technicians of all kinds. One knows of endless waits in hospitals, clinics, doctor's offices. The diligent reader of Congressional hearings will find experts in every field reporting that there is a need for more training, more training facilities, for more specialists and

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personnel of every kind. Thus, one Congressional committee in 1966 points out:

> The Public Health Service reports that we have approximately 10,000 trained home health aides as compared to 200,000 that are needed. . . .
>
> Or,
>
> As long ago as 1953, it was concluded that adequate sanitation program staffing called for at least one sanitary engineer or sanitarian for each 15,000 persons. . . . A host of new areas of responsibility have been added since, but some local communities, counties and states do not meet the standards for environmental control set thirteen years ago. Over 13,000 sanitary engineers and sanitarians would be needed to meet those 1953 minimum staffing requirements. . . . Of this number, a 1962 survey concluded that between one-third and one-half are actually employed. . . .
>
> Or,
>
> The public spends 2.4 billion a year to maintain a standard of dental health in which only 40 per cent of the people visit a dentist even once a year.

And thus, logically, we would need at least a doubling of the 106,000 dentists and dental hygienists and technicians.

Dr. Howard Rusk makes a similar point:

> President Johnson in his health message pointed out that last year we broke the record and rehabilitated 120,000 disabled persons. . . . It was 40,000 in 1945. The President's 1966 budget called for funds to rehabilitate an additional 25,000. But when you realize there is a backlog of 2,000,000 and when we get 250,000 new cases a year. . . .

Once again we have a *prima facie* case for doubling expenses and personnel, and this in one of the most rapidly growing programs of the government.

If we look at needs from another perspective, the shortages are even greater. Thus, if we consider those areas of the country that are best served with personnel, and those that are worst served, the differences are of the order of magnitude of two or three to one.

In 1957, three states in the northeast averaged 176 doctors per 100,000 population; three states in the southeast averaged 71 per 100,000. In metropolitan counties, the ratio was 173 per 100,000; in counties neither metropolitan nor adjacent to metropolitan counties, the ratio was 74 per 100,000. In isolated rural parts of these counties, the ratio was 50 per 100,000. There has been no substantial change in this pattern in recent years, though it has been pointed to regularly for at least forty years. In 1965, New York State had 133 physicians per 100,000 population in private practice, Georgia 70, Mississippi 60.

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Isolated rural counties had less than half as many physicians as their share of the population (3.2 per cent of the population, 1.5 per cent of the doctors). Low-income sections of cities did even worse. In Watts before the start of the OEO-funded community health center, there were eight physicians for 35,000 people. The newspapers often report the plight of towns that are ready to provide doctors a house, a car, and a clinic—and get no takers. In New York State, with the best doctor-patient ratio in the country, 56 municipalities with populations of more than 2,000 have no doctor.

As for doctors, so for nurses: in 1957, Connecticut had 599 professional nurses per 100,000 population; Arkansas only 123. The northeast states, as a group, had 416 per 100,000; the east south central had 144 per 100,000. In 1963, it was estimated by the Surgeon General Consultant Group on Nursing that 850,000 more nurses would be needed by 1970—which was 100,000 more than were being used in all hospitals in 1963. And, in order to indicate that these estimates were not simple professional hyperbole, it could be pointed out that, in 1961, one-half of the positions for professional nurses in public hospitals in New York City were vacant; in hospitals in general throughout the country, the figure was 20 per cent. In 1967, three-quarters of the positions for professional nurses in New York City's municipal hospitals were vacant.

And yet—

The case is overwhelming. Between 1955 and 1965, while population increased 17 per cent, medical auxiliary personnel increased 63 per cent. That should have made a difference—but, as we have seen, by the later date there was no let-up in projected shortages for the present and the future. If we estimate shortage by some standard established by a professional group as to how much of some kind of personnel is needed, there is indeed a shortage.

If we estimate shortages on the basis of health in well-served and poorly-served areas, the matter becomes more obscure. For example, William N. Hubbard has pointed out:

> In the United States the ratio of physicians to population varies from 188/100,000 in New York to 93/100,000 in Wisconsin, *with little difference in the general health status of the two states.* . . . During World War II there was a massive exodus of physicians from [civilian practice] in 1942, and a sudden return at the end of the war. *These shifts did not affect statistical measures of trends in general health.* [My italics]

And now let us observe the interesting experiment conducted by

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one expert health planner, Robert M. Sigmond, the director of a leading health planning council:

> During the past year I have been conducting an informal, unscientific, unstructured, confidential survey. I have presented dozens and dozens of practicing physicians with the following hypothetical suppositions and questions:
>
> *Suppose this country faced a national emergency like a long world war that required your region to contribute as many physicians, nurses and other health workers as possible. Suppose further that you were placed in charge of the health services in your region and were assured of the complete trust and cooperation of everyone. Would you be able to contribute any of the region's physicians, surgeons, nurses and other health workers for national emergency service, without impairing the quality of the health service provided in your region?*
>
> Every single individual whom I questioned believed that if he could achieve complete cooperation and commitment, health manpower in the region could be substantially reduced without impairing quality of care and without adverse effect on the people's health. The unanimity of response was striking.
>
> Even more striking were these physicians' responses with respect to the amount of reduction in health manpower that could be achieved without reducing the quality or effectiveness of service. When asked to estimate the proportion of the region's health manpower that could be released for national emergency service, the answers varied from about 10 to 40 per cent, with an average of about 20 per cent.
>
> Equally as striking was the conviction of most of these doctors that the greatest proportion of health manpower could be spared among the most highly trained health personnel—physicians and nurses, for example, as contrasted with aides, orderlies, and kitchen workers.
>
> How would manpower reductions be achieved? . . . There was a surprising consistency of basic themes.
>
> 1. grouping physicians (and other practitioners) in organized settings and centralized locations so that they can make full use of lesser skilled but specially trained workers in their 'office practices' and thus provide more service per physician;
>
> 2. locating more physicians offices at hospitals and removing the distinction between 'office' and 'clinic' to reduce physician travel time and permit full use of the hospitals' manpower and technical resources without having to admit patients as bed patients;
>
> 3. redefining many health service tasks so that lesser trained personnel can take them on. . . .;
>
> 4. permitting nurses to make house calls in medically supervised home health programs;
>
> 5. creating closer linkages between related hospitals to permit grouping of maternity, open heart surgery, and other specialized low use services at fewer larger hospitals;
>
> 6. encouraging all families to develop more efficient medical care habits by identifying with one nearby physician group for provision and supervision of all needed health services.

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Other ideas were mentioned less frequently: automation and computation, self-help units in hospitals, intensified health education, multiphasic screening, etc. No one in the group suggested any lengthening of the work week. . . .

Interestingly enough, many of the doctors whom I asked felt that the process of reorganizing to reduce manpower could produce improved quality with fewer health personnel. . . .

I . . . asked one last question: *suppose the great national crisis was not a long world war, but the spiralling cost of medical and hospital services and the many unmet health needs right in your own region, the deaths and suffering that could be avoided by expanded and improved health service. . . . Could you deliver?* I wish I didn't have to report that most of my group doubted that it would be possible, under present circumstances, to achieve the degree of commitment and cooperation that would produce results. At least, as a number said, 'not in my lifetime.'

What are "reasonable" goals?

It is clear that Mr. Sigmond and his friends are not about to rush into combat to try to restrict the flow of federal funds into the medical schools, nursing schools, and other institutions which try to increase the quantity of personnel. Quite the contrary; when new legislation and new funding are proposed, they will come forward to support it, by pointing to the shortages of personnel. And they would have a reasonable argument. The reorganization of health services that might justify a reduction of personnel is not forthcoming, and in its absence we do face the reality of concrete shortages.

But in the light of such awkward evidence, one is entitled to ask: what "goals" for health personnel are "reasonable?" A few years ago, one health specialist went back many years to examine the regularly predicted shortage of doctors that was to overwhelm us in this country. He concluded that, even though we never seemed to undertake action on the scale that each study said was absolutely necessary, the shortage nevertheless did *not* overwhelm us. Indeed, one could argue that the extraordinary increase in doctors' fees in the last few years has not occurred because the doctor shortage finally caught up with us but because the government, through Medicare and Medicaid, guaranteed the payment of "customary" fees. As a result of these guarantees, those doctors who charged less to the aged and the poor no longer found it necessary to do so. If there had been 10 or 20 per cent more doctors, one wonders—I have no evidence for this point—whether the increase would have been moderated in any marked way. Perhaps, just as research shows that people may be

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found to fill whatever number of hospital beds are provided, people will be found, if there is a guarantee of payment, to patronize whatever doctors there are.

Whenever the health specialists regularly demand more personnel (as they demand more beds), skeptical economists will point out that, for example, there are enough trained nurses not working to overcome or mitigate the calculated shortages, and that salary increases would bring them back into the nursing profession. Interestingly enough, in this case, owing to the recent organization of nurses in many areas, and the resulting increase in wages, it was possible to test the analysis. The National Advisory Commission on Health Manpower of 1967 was the first of a whole series of postwar government reports to find that the projected number of nurses would not fall too short of need or demand in 1975. It was also rather moderate on the need for an increase in the number of physicians. In short, it seems clear that the "shortage" of doctors and nurses is not simply a matter of numbers but of efficiently utilizing the numbers that now exist.

II

There is no question that the poor are sicker. Unfortunately, there are no nationwide mortality statistics by income. One of the best studies has been a recent comparison of poverty and nonpoverty areas in Chicago. (This does not permit really fine analysis, because of the limitations of area comparisons.) Crude mortality in poverty areas was only three per cent higher than in nonpoverty areas; but the people in poverty areas are younger, and if it had been possible to compute age-specific rates, the differences would be much greater. Differentials in infant mortality were very large—75 per cent higher in poverty than in nonpoverty areas. In both cases, the differences between white and nonwhite were even more substantial than between poverty and nonpoverty areas.

The clearest and best evidence of poorer health among the poor is to be found in studies of days of disability per person per year, where differences of the order of two-to-one are found. Those in families with income of under $2,000 a year have 29 restricted activity days a year, while those with family income over $4,000 a year have less than half that, 13 restricted activity days a year.

But while the poor are sicker, the differences in the utilization of health care are not as marked as one might expect. The same study which reported twice as many disability days for those under $2,000 a year as for those over $4,000 a year showed lesser differences with

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respect to the use of physicians. Fifty-nine per cent of the poorer group have consulted a physician in the previous year, 13 per cent a specialist, compared with 73 per cent and 28 per cent of the better-off income groups. These differences in health care utilization by poor and nonpoor, which were once extreme, are now declining. Indeed, in some settings they are now reversed. In 1928-31, families with an income of more than $5,000 spent *11 times as much* on medical care as families with incomes under $1,200. In 1962, families with incomes of more than $7,000 spent only 37 per cent more on medical care than families with incomes under $2,000. (Between 1928 and 1962, the proportion of the population in families with more than $7,000 in income rose from six to 31 per cent; the proportion in families with under $2,000 fell from 55 to 12 per cent.) The cut-off points for income in the two years are quite different, but they clearly record a great equalization of expenditure.

The correlation between income and hospital admission has also fallen. In the 1928 study, the admission rate for those over $10,000 a year was more than twice that for those in families between $1,200 and $2,000. A 1952-53 study showed almost no association between income and hospital admissions. This result came about because, in the insured portion of the population, there is *a negative* association between income and hospital admission (210 admissions per 1,000 for those in families with incomes under $2,000, 120 for those in families with incomes over $7,500). The National Health Survey of 1957-63 shows again almost no association, with a slight bulge for middle-income groups between $3,000 and $6,000. But, when one makes an adjustment for the fact that the poorer families are older, there is a slight association between income and hospital admission—117 for those below $2,000, 128.5 for those above $7,000. The association is nothing as large as it was in 1928-31.

New York City, which in respect to social policy often seems to project the course that the rest of the country will follow in a few years, gives striking evidence of the increasing equalization of health resources among different income groups, owing to the elimination of income barriers to the use of health resources among the poor (that is, those on welfare, who number one-eighth of the population of the city, and an even larger number who are eligible for a substantial range of free medical services under Medicare). Indeed, economic barriers are now either non-existent or minor for the poor, who thus may face fewer economic barriers to health care than most of the nonpoor, whose insurance generally only covers part of their health needs. Two recent studies demonstrate the substantial use

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of health care services by the poor. Thus, a 1966 study of a sample of New York women and children on welfare shows the mean number of physician contacts (visit to physicians, home visits, emergency clinic and other clinic visits) is 5.0 per year for the mothers, 7.7 for the children, which the authors of the study point out is comparable to national norms. The authors compare their sample with an National Opinion Research Center survey in 1955, which shows the following number of physician visits by women, by income:

under $2,000	5.0
$2,000 - $3,999	4.3
$4,000 - $6,999	4.5
$7,000 and over	4.9
all incomes	4.5

A 1964 study shows an average of 4.8 physician visits for the civilian, non-institutional population of New York City. Differences by income were reported only for those with family incomes under and over $4,000. Those under $4,000 had 6.6 physician visits per year, those over $4,000, 4.2. The comparable figures for the northeastern United States in 1963-64 still ran the other way: 4.3 for those under $4,000, 4.7 for those over $4,000. The differences by income in New York—with the poorer showing more visits—showed up for each of the major groups in the population (white, nonwhite, and Puerto Rican). The poorer remained sicker—the number of acute conditions was greater for those under $4,000.

Nationally, the statistics collected by the National Center for Health Statistics shows increasing convergence in utilization of health services—measured quantitatively—between 1958 and 1966. Income differences in utilization still exist, but they are declining. One analyst concludes: "Income level of family seems to play little part in the utilization of physician services when race, sex, age and education are considered." Similarly, "Less and less difference continued to be the case among educational groups and whites and nonwhites, although the differences remain quite significant in both instances."

Better, worse—or different?

But more significant than the scale of remaining differences in utilization between income and racial groups are two other elements. One is the quality of medical care. We pointed earlier to the fact that the poor see specialists less often than the better-off. Another difference is found in the *reasons* for which care is sought. The

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better-off have more preventive and diagnostic visits; the poorer have visits for acute conditions. These are clear differences, to be found in the data.

Other differences are harder to quantify but are certainly equally important. We know the poor go more often to clinics and emergency wards—but is the care better or worse than for those who go to private physicians? Whether better or worse, it has certainly been different. Perhaps one way of suggesting the difference is to reprint Oscar Lewis's description of a visit by a poor Puerto Rican mother to a New York clinic:

> Finally Soledad's turn came. A tall Negro woman in a navy-blue uniform handed her paper jackets, saying, "Here, put these on the children." Then she began to fill out a form for Soledad, beginning with her name and address.
>
> "And how many children have you?"
>
> "Four."
>
> "Names?"
>
> Soledad gave the children's names, explaining that her son, Quiquo, was in Puerto Rico with his father.
>
> "How come this little girl's name is Alvarado?"
>
> "Because she isn't my own daughter, I adopted her," Soledad answered.
>
> "Well, I'd better put them all down as Rios," the woman said. "What is your husband's name?"
>
> "My husband is dead."
>
> What did he die of?"
>
> "In an accident." Soledad answered the woman's questions rather sullenly. "What busybodies these people are!" she said in an aside to Rosa. "You'd think I was being jailed for murder."
>
> The attendant asked if Soledad was getting welfare aid. Soledad replied that she was not. "Don't you know you qualify for it?"
>
> "Forget it," Soledad said shortly. "As long as I can work to support my children, I don't want welfare. Not the way they treat you."
>
> "Have the children been in contact with anyone who had tuberculosis?" the woman asked.
>
> "Well, yes, with a cousin of mine in Puerto Rico a long time ago. But it was the school doctor who told me to bring the children here." The attendant went out and a doctor came to give the children the tuberculin test. He then sent them to an adjoining room for chest X-rays, telling them to come back for the results a week later, on Friday.
>
> Before they left the Health Bureau, Soledad spoke to the attendant who had filled out their forms. "Could you take care of my nephew? All he needs is to have these stitches cut."
>
> "No, not here," the woman answered. "You'll have to take him to a hospital for that."
>
> "But we can pay," Soledad said.

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No, we can't do it here," the woman repeated impatiently, waving them out.

"What sons of the great where they are, all of them! They should have a bomb dropped on them," Soledad exclaimed. "Look," she said when they were outside, "I'm going to cut Gabi's stitches myself. I know they won't do it at the hospital either. They don't want to take care of him."

This is not a particularly horrendous example of the treatment of the poor, but suggests its disjointed and often indifferent character. A hypothetical description by Lester Breslow is even more vivid:

> Consider the case of a young woman whose family is receiving Aid to Families with Dependent Children. The most likely medical event in the life of such a woman is pregnancy. Assuming that she is a highly intelligent and well-motivated woman, she will seek prenatal care as soon as she finds that she may be pregnant. She seeks this care from her local health department clinic. When the time comes for her to deliver the baby, she is transferred (theoretically with her records but in actuality most likely not) to a public hospital. There she encounters a new set of documents and personnel for delivery of the baby. Before discharge, the baby will be examined by a pediatrician who will never see the child again. Now this highly intelligent, well-motivated young woman will take her baby to a well-child clinic operated again by her health department but at a different place from where she received her prenatal care and at a different time. After several such visits to the well-child clinic, the baby may become ill. When the mother takes the baby to the clinic where the doctors and the nurses have been providing care, she is informed that she cannot obtain care there any longer because the child is sick. She is advised to take the child to a physician near her home who is paid by the welfare department. This new physician establishes still another record for the baby and provides care in his office. If the child becomes sick enough to require hospitalization, the physician tells the mother that he is not able to admit her child to the hospital where he practices because she is on welfare and she must take the baby back to the public hospital. She turns again to the public hospital care for her sick child, but after a few days is informed that the child has a special condition making the baby eligible for crippled children's services, which must be provided in still another resource. . . .

It is a depressing picture, and suggests the need for better *organization* of medical care for the poor, rather than simply a greater quantity of health resources. But when we speculate just what that organization should be, there is no clear answer, as we may see by considering the health care systems of other countries.

Our concern with the health care systems of other advanced countries has stemmed from three sources. First, they provide care at far lower costs than we do. Second, there is much less discontent with the health care system. And third, they not only provide cheaper

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care, and more satisfying care; the consumers of this health care also show up as healthier than Americans on the major indices.

The most important such index for international comparisons has been infant mortality. And all through the 1960's there has been considerable concern at the poor American performance in this respect. In 1963, against a United States infant mortality rate of 26.0, Sweden showed a rate of only 16.6, and Australia, Denmark, England, and Wales, Finland, the Netherlands, New Zealand, Norway, and Switzerland, all showed lower rates. Later in the decade, the United States stood 24th in international comparisons—most of the industrially-developed nations of the world now did better than this nation. Nor did we do better with adult mortality. In 1959-61, every nation in the OECD but one showed a lower death-rate for males in the ages 45-54 than the United States, all but three showed a lower death rate for females, seven showed lower infant mortality rates, ten showed lower mortality rates over-all.

But, let us now consider Sweden and England more closely.[1] We will note, first, that, even if the AMA is now convinced, along with almost everyone else, that we need more doctors, the fact is that we already have considerably more than England, and far more than Sweden. The United States, in 1958, had 140 doctors per 100,000 population, England and Wales 111, Sweden only 83. Perhaps the Swedish doctor works very hard and gets to see many patients? Not so if we estimate work-load by number of patients seen. In Sweden, the average number of visits to the doctor per person per year is 2.5, compared to 4.7 in England and Wales and 5.3 in the United States. On the other hand, the Swede goes to the hospital much more often than the Englishman, slightly more often than the American. The range in hospital use in the three countries is given in the following table:

TABLE 1. *Hospital Admission Rates Per 100 Population*

	BEDS PER 100 POPULATION	ALL	SHORT-STAY HOSPITALS	SHORT-STAY HOSPITALS, EXCLUDING DELIVERIES
England and Wales	10.5	86	77	68
Sweden	15.0	136	126	113
United States	9.1	134	125	105

If we think that the Swede is going to the hospital more often for minor ailments, and getting better care for them, this assumption is challenged by the fact that his hospital stay is much longer than the

[1]This section is based on important comparative work by Osler Peterson and Odin Anderson.

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American's—15 days (as is also true in England), compared to eight here. It's doubtful that many Swedes spend 15 days in a hospital for a minor ailment—hospitals are still just hospitals, not country clubs.

So the Swedes see doctors less, use hospitals more. There are also remarkable differences in the use of hospital personnel. Odin Anderson estimates that, while Sweden has one employee per hospital bed, the United States has two and one-half.

We all know we shall have to spend more for medical care—every study so assures us. Yet, in comparisons made 10 years ago Sweden spent 3.5 per cent of GNP, compared with 5.3 per cent in the United States; yet its infant mortality rate was 63 per cent of that of the United States, and its mortality rate for males aged 45-54 was only 52 per cent of that of the United States. (England spent a higher proportion of GNP—4.5 per cent—than Sweden, though still less than the United States, and did better than the United States, though not as well as Sweden; its infant mortality rate was 87 per cent of ours, its male mortality rate—45 to 54—76 per cent of ours.) What does one conclude from such a comparison? That we need fewer doctors, fewer nurses, and more hospitals? Certainly, that would be one cheap way of making the United States, in some respects, more like Sweden.

Of course, the more reasonable conclusion is that the critical issue is not the *quantity* of health facilities or of health manpower, but the *system of organization* of health care. Yet having said that, we still have some problems. It is interesting that no one in this country, whether on the left or the right in issues of health care, proposes following what seems to be one of the most striking features of the system of health care in England and Sweden—the sharp separation between the general practitioner and the hospital physician. The hospital physician works full-time in a hospital; when patients are referred, the general practitioner gives up all claim to care, and the patient is now in the hands of the hospital staff. This means a sharp differentiation in status, and it means too that those opportunities for education and control of the physician treating his patient in a hospital under hospital rules that our system at least makes possible do not exist in those countries. The change most widely proposed in American health care—comprehensive care by a team of physicians and other professionals—is not at all common in England and Sweden, where the doctor is still the primary source of health care for people.

III

The elements of the English and Swedish system that we can most easily follow are those of universality of access to a common system

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and better provision of care in distant and rural areas. While simple decency requires that we move in that direction, we should not oversell the results in advance. One cannot help feeling, reviewing the amazing pattern of hospital understaffing—by our standards—in Sweden, that a good deal must be based on the fact that there are Swedes in the hospital, and Swedes serving them. In other words, there are aspects of culture that affect health and care, and these aspects may be quite independent of the health care system.

There is a good deal of evidence along these lines. Even in this country, there are substantial differences in health which seem quite independent of differences in health care systems. Consider the differences between states of the United States, all with about the same kind of health care system:

> The most important differential [in mortality] is race, but even considering the rates for whites only, the age-adjusted death rate (average 1959-61) in the highest state is 33 per cent greater than in the lowest; and the highest infant mortality rate is 55 per cent above the lowest; and the death rate for males 45-54 in the worst state is 60 per cent higher than in the state with the lowest rate.

And the variation between the states is not to be explained only by the resources they devote to medical care. In 1954-57, Utah and Iowa had the lowest infant mortality rates in the country, and they had by no means the largest input of resources. (Indeed, if one wants to push this further, it may well be the states with the highest proportion of Scandinavians who seem to do best in health.)

We can point to two major factors which help explain why the provision of health care, even when well organized, may be only indifferently related to the improvement of health. The first is the role of still poorly understood cultural factors in affecting health, independently of available health resources and the health care system. Thus, there are remarkable differences between different ethnic and racial groups in health, even when we hold constant the amount of health care available to these groups.

TABLE 2. *Perinatal mortality rates for New York City, 1961-3.*

FATHER'S OCCUPATION	WHITE	NEGRO	PUERTO RICAN
Professional Managerial, and Technical	16.7	24.2	22.5
Clerical and Sales	20.8	31.5	24.4
Craftsmen and Operatives	20.9	32.9	24.3
Laborers and Service Workers	25.9	36.6	27.8

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This is easy to illustrate. If we consider Negroes and Puerto Ricans in New York City, for example, and we hold constant the socio-economic background of parents, we find startling differences in infant mortality, as Alonzo Yerby has indicated in the table above.

Lester Breslow has pointed to the surprisingly better health records for Japanese and Chinese in California where the infant mortality rates for 1964 were: 33.9 for Negroes, 20.8 for Caucasians, 13.6 for other nonwhites. And, in the case of the five-year relative survival rate from localized cancer of the breast: 73.4 for Negroes, 81.5 for Caucasians, 90.8 for Japanese.

Minako Kurokawa has studied the remarkably low childhood accident rates of Japanese in California. Odin Anderson has pointed to the evidence that immigrant Jews, despite extreme poverty and overcrowding, showed a remarkably low rate of infant mortality. Comparisons in eight cities in the period of 1911-16 showed that while the white rate averaged 108, the native born white 94, and the foreign-born white 127, the foreign-born Jewish rate was an incredibly low 54.

Culture, operating through socio-psychological factors, is thus clearly one element determining the health of a population. To unravel its influence is enormously difficult; and to then go on from that to health care policies that will take these influences into account is even more difficult. Again, in countries of homogeneous population, these effects of culture on health are constant, or near constant—the health system takes them into account automatically, so to speak. In a country with a population of varied origins and distinct subcultures, the problem is not so simple.

One of the reasons these subtle socio-psychological differences between subcultural groups continue to have consequences for health is that, as some major traditional causes of disease and death are conquered, personal and psychological factors become important in determining an individual's capacity to maintain health. Thus, Odin Anderson points out in connection with infant mortality:

> Once the [infant mortality] rate drops down to 30, the broad economic and social factors operate with lessening effect, and personal behavior factors of the families in the high impact mortality groups involved, particularly the mothers, begin to exercise an increasingly dominant influence.

And, Dr. Alfred Yankauer writes, in connection with child health care services:

> One must recognize, however, that not all countries seem convinced of the values of integrated services. The Netherlands and Sweden,

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which boast the lowest infant mortality rates in the world, seem content with the current separation of their preventive and curative services. One wonders whether this is a reflection of their small populations, homogeneous nation cultures, common values and traditions. These might serve to promote an informal communication and basic understanding which in a large, complex, heterogeneous, mobile society such as the United States must be formalized through administrative and institutional channels.

There is a second line of argument and investigation which weakens the connection between health achievements and a specific health care system. This is the growing weight of evidence that general environmental conditions, which seem to have played a large but undetermined role in reducing the death rate in the 19th and early 20th centuries, may now be playing a substantial role in *increasing* it in the latter third of the 20th century. Thus, Victor Fuchs writes:

> One of the factors contributing to the difficulty of reaching firm conclusions about the relationship between health services and health is the importance of environmental factors. Some . . . are biological, involving the appearance and disappearance of bacteria, viruses, and other sources of disease. Some are tied to the production process, e.g., the factors associated with occupation. Others are part of consumption, e.g., diet, recreation. Major attention has been given to income, partly because many other environmental factors tend to be highly correlated with real income, both over time and cross-sectionally. Examples include housing, education, urbanization, drinking and the use of automobiles.
>
> The prevailing assumption, in some cases with good evidence, has indicated that an increase in real per capita income has favorable assumptions for health, apart from the fact that it permits an increase in health services. *This assumption for the United States at present, except for infant mortality, may reasonably be questioned. This country may have passed the peak with respect to the favorable impact of a rising level of living on health.* [My italics]

For two reasons then, even when we adopt some of the measures that we know will improve our chaotic and frustrating methods of providing health care, we may not do as well as countries that are smaller and poorer. One might conclude with two passages, one from the pediatrician Alfred Yankauer, one from the economist Victor Fuchs. They suggest some of the lines of thought, and the new directions, we are likely to be following in the future.

> The contribution of the traditional personal health services to any measurable improvement of mortality indices may be sharply questioned. It may, in fact, be thoroughly irrational to justify or "sell" a child health care program solely on the basis of its effect upon indices of mortality and morbidity. A more compelling basis is simple com-

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passion and the ideology of service which the professional physician is expected to possess. It is no longer tolerable that the food, or the quantity, quality, and personalized nature of the health care which an infant receives, should be determined by the income and race of his parents.

Victor Fuchs says:

My final suggestion—almost plea—is for us to remember that what we are really concerned with is health—not costs as such, and not medical care as such. My reading of the health literature leaves me with the impression that the greatest potential for improving the health of the American people is not to be found in increasing the number of physicians, or in forcing them into groups, or even in increasing hospital productivity, but is to be found in *what people do and don't do, to and for themselves.* With so much attention given to medical care, and so little to health education and individual responsibility for personal health, we run the danger of pandering to the understanding urge to buy a quick solution to a difficult problem. [My italics]

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The Mafia and the web of kinship

FRANCIS A. J. IANNI

ONE of the most extraordinary sociological puzzles of the times is the contrasting conceptions about the *Mafia* that have persisted for more than two decades, with seemingly no way of resolving almost diametrically divergent conclusions. On the one hand there are criminologists such as Donald Cressey, a consultant to a President's Task Force on Law Enforcement who talk of "a nationwide alliance of at least 24 tightly knit *Mafia* 'families' which control organized crime in the United States," the extent of which is estimated "at $50 billion per year with $15 billion in profit." On the other hand, there are writers, most recently Norval Morris of the University of Chicago Law School and his colleague, a visiting Australian criminologist, Gordon Hawkins who scoff at the evidence and the figures and, while readily admitting the presence of Italian-Americans in crime, are skeptical of the existence of a national crime syndicate or cartel. Government officials over the years have talked of the *Black Hand, The Unione Siciliana,* the *Mafia,* and, within the last decade of *La Cosa Nostra,* though the latter name was never used publicly before the disclosures of an Italian mobster, Joseph Valachi.

William James once said that wherever there is a contradiction it make relevant distinctions. My own feeling is that the questions

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is the result of the fact that the parties to the dispute have failed to about the *Mafia* have been wrongly put. To look at the problem in terms of whether a "syndicate" or "corporate organization" exists is to miss the most salient cultural facts about Italian, particularly south Italian life, and thus to misperceive the nature of the ties which do exist among Italian gangsters and shape the modes of their activity. If organized crime here, as Daniel Bell once put it, is an "American Way of Life," then one must look at the *Mafia*, not as a specific kind of organization, but as an aspect of an "Italian Way of Life"—and then see if this perspective can illuminate the picture.

In 1967 Francesco Cerase of the Institute of Social Research in the University of Rome and I decided to do just that, and with financial support from the Russell Sage Foundation we began a comparative field study of criminal syndicates in the United States and Italy. Our interest was in looking at them as secret societies rather than merely criminal organizations, and in seeing if there is a common model—some system of order or code of rules—which describes social controls within all such groups. We saw our task as the formulation of the system of implicit rules shared by the members of Italo-American criminal syndicates by examining how those members apply these rules. The central question of our research was: What is the code of rules that makes a criminal syndicate a social system and how do its members play the game?

For the last three years we have been observing and recording patterns of behavior and social relationship in several organized crime "families" in New York and we have attempted to identify the cultural patterns—both Italian and American—which underlie and activate this ordering of behavior.

Government studies invariably point to some organizational link between the Sicilian *Mafia* and Italo-American crime syndicates. But anyone searching out the origins of Italo-American criminal syndicates in Sicily and its *Mafia* finds problems on both sides of the Atlantic. In the first place, by no means all of the reputed *Mafia* members are Sicilians. Many, like Vito Genovese came from in and around Naples; some like Frank Costello, are from Calabria. But, significantly, all *are* from the south of Italy. The second problem is that while the Sicilian *Mafia* is well-known to Americans, each of the other two southern provinces—Calabria and the Campagnia (Naples and its environs)—also produced its own distinctive secret criminal society and there is no evidence of any organizational linkage among the three. These two facts, long known but largely ignored in studying the role of Italo-Americans in organized crime,

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are of fundamental importance when they are considered together and they are a basis for our answer to the question whether or not there is a *Mafia* in the United States.

The logic of our answer proceeds from field work in Italy which convinced us that *Mafia* is more than just a criminal organization; it is a generic form of social organization which developed in the south of Italy under particular social and cultural conditions. The *Mafia* is a social system in which power is distributed through a network of clan-like gangs which operate parallel to the law and which are held together by real and artificial kinship bonds. In order to deal with the problem of "the *Mafia*," one must turn first to southern Italy, and then consider whether or not the *Mafia,* or some variant of it, was transplanted in the United States.

II

There are, as almost everyone knows, two Italies—the urbane and economically-advanced north and the rural, still semi-feudal south. The northern Italian is a European; the spirit of capitalism and the acquisition of wealth motivate him as single-mindedly as they do the Swiss or the German. The southern Italian is a Mediterranean. The acquisition of material goods are secondary to him; the power to influence people—to command obedience and respect—are his primary concern. These differences are not superficial; they mold the behavior of the child; they shape all social relations. While beginning to change, these desires are still obvious in the three imperatives which shape southern Italian culture—the primacy of the family, the juxtaposition of church and state, and the ascendency of personal honor over statutory law. And these explain why the *Mafia* and other secret societies developed in the south.

Italy is a nation of families, not of individuals. In the south, especially, the family *is* the social structure and no social institution —not the state or even the church—has ever successfully challenged its supremacy. The family demands the southern Italian's first loyalty and within it he practices all of the virtues and self sacrifice which other men save for their church or state. The pattern of roles within the southern Italian family is recognizable from the model of the divine family in Catholicism. The authoritarian father is a patriarch who demands and commands immediate obedience. The true *paterfamilius,* he represents the family's power and status in the community. The mother is subservient to the father and her humility, and willingness to bear all burdens enshrine the honor of the family

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and win the respect of her children. Daughters, like mothers, are humble, and their chastity is a matter of great moment to the family; in Italy wars have been waged over a daughter's honor. The son is obedient to his father and respects his mother. This pattern of relationship extends beyond the biological family by *comparaggio*—the practice of establishing fictive kinship with *compare* (godfathers) and *comare* (godmothers). Godparent-godchild relationships have far more potency in southern Italy than do the ceremonial godparent relationship we know in America.

Neither church nor state has ever been strong enough to challenge the family. The southern Italian treats government at any level with skepticism. He surrenders everything to the family but nothing to the state. And even those who are deeply religious do not really trust the church as an institution. In Italy, the church has always been an independent temporal power as well as a religious institution and this face of the church is distrusted just as much as any other government. It is this juxtaposition of church and state—a unified church to which all Italians belong and a weakly united state that few Italians serve—which has kept any strong political or religious authority structure from forming.

In southern Italy the rule of law is replaced by a familial social order which is regulated "invisibly." This social order is internalized in a code which exhorts each man, regardless of his age or rank, to protect the family's honor and to avenge any breech of that honor. The code is an integrative behavioral system which binds families to each other throughout each village and town in a ritualistic web difficult for the southern Italian to escape but just as difficult for the non-Italian to understand.

These major themes shape the culture of the south of Italy—a strong family, a weak political structure and a sense of honor which takes precedence over the law. Not only do they distinguish the southern Italian from his northern countrymen, they also explain how and why secret criminal societies formed in the south but not the north.

While the Sicilian *Mafia* is the best known of the Italian criminal societies (the Italians call them "delinquential" because not all of their activities are strictly criminal) the south of Italy has produced others as well. Throughout the south, the oppression by alien governments which preceded unification and the weakness of the central government which followed it, produced many bands of brigands whose aim ranged from profit-making to blood-revenge and even to reformist social justice. These social bandits—as Hobsbawm has de-

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scribed them—do not qualify as criminal secret societies in the *Mafia* sense because with few exceptions, they were *ad hoc* groups, with no past and a doubtful future. But they spring from the same cultural sources that produced the *Mafia* and other criminal secret societies, and in many ways they are ancestral to them.

In Calabria, the mountainous and remote province at the southernmost tip of mainland Italy, for example, an organization somewhere between social banditry and a criminal secret society seems to have existed almost unknown to the outside world (including the rest of Italy) for at least a century. Known colloquially as *'ndranghita* ("brotherhood" in Calabrian dialect), it is also called the *Onorata Società* (Honored Society). Although brigandage and smuggling were its primary functions, it became a powerful source of local, political and social control at the turn of the century. (The advent of fascism destroyed its political power.)

While the *Onorata Società* developed in the isolated mountain villages and then spread to the capital city of Reggio Calabria, another criminal secret society, the *Camorra,* was born in the city of Naples and then spread out to the villages and towns surrounding it. When the Camorra first became known in 1820 it was found only in the prisons of Naples where it had developed to the point that the control of the prisons was as much in the hands of *Camorristi* as it was of their Bourbon warders. Its influence spread outside the prisons, first into the city of Naples and eventually throughout the surrounding countryside. Discharged criminals formed the nuclei of the external *Camorra* gangs and for the next forty years, bands of *Camorristi* organized for robbery, blackmail, kidnapping and smuggling. Today, particularly in Naples, but elsewhere in the region as well, there are gangs and gangsters who smuggle cigarettes and gasoline (or, more frequently, expropriate them from NATO bases), extort money and operate the full range of familiar rackets. They are known to Italians as *Camorristi* or sometimes *"magliari"* (sledge hammers) but they retain little more than the aura of the old *Camorra*. The real *Camorra* required a weak government and social disorganization to flourish and, therefore, did not survive the first decade of fascism in Italy. If nothing else, Mussolini did bring strong, authoritarian government to Naples forcing the *Camorra* to go underground where it seems to have died.

The most famous of the secret societies in the south of Italy, the Sicilian *Mafia,* survived fascism. But what is alive and well are matters for conjecture. *Mafia* is a word which has at least two distinct meanings to Sicilians. When used as an adjective, it describes

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a state of mind and a style of behavior that Sicilians recognize immediately. It is bravura but not braggadocio. It bespeaks the man who is known and respected because of his contacts and ability to get things done. It suggests that he is unwilling to allow the merest hint of an insult or slight to go unanswered and it insinuates that he has means at his disposal to see that it doesn't. He is a "man of respect" who has "friends." In Palermo, even the style of dress, with the hat cocked to one side, the walk which we would call a self-assured strut, the manner of speech and the general air of self-reliance can mark a man as *mafioso* (the Sicilians actually say *mafiusu*). Such a man may or may not be a member of a formal organization in which he has a clearly defined role. Yet even in Sicily, the word *Mafia* also clearly denotes just such an organization when it is used as a noun.

Italians are trained from childhood to understand that things are not always what they seem. This use of double meaning has been a source of misunderstanding for years. The Italian scholar or journalist says "*mafia* is an attitude, not an organization." To the American this means that he is saying "there is no *Mafia*." He is saying nothing of the kind. He is suggesting that *mafia* as a pattern in Sicilian life exists regardless of the persistence of the *Mafia* as an organization, and that the organization would be impossible without the ethic. The distinction is subtle, but real. To the Sicilian it is impossible to separate the lower case state of *mafia* from the upper case powerful secret organization, *Mafia*. Both are part of the culture of Sicily which he learns from childhood.

The spirit of *mafia* derives from the fact that every man seeks protection for himself and his family. He cannot get this from the state, but only from a network of protection to which he finds himself bound. This network of friendship is a pattern of social obligation that has more permanence than religion and more legitimacy than law. Friendship becomes part of kinship. Each man and every family know what they owe to others and what is due from them. Favors become obligations and wrongs debts which demand redress; "*Si moru mi voricu; si campu t'allampu*" (If you kill me they will bury me; if I live, I will kill you). The spirit of *mafia* persists because it is born of this network and it is in turn the progenitor of the secret organization, *Mafia*.

In many ways, the term *organization* does not fit the Sicilian *Mafia*. European students of Mafia agree that there is no highly-centralized organization called the *Mafia* in Sicily (or anyplace else say the Italians); *Mafia* is a form of control over a particular community's life by a secret—or at least officially unrecognized, because everyone

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in the village knows who is involved—system of local groups. There is today an urban *Mafia* in Palermo that the Palermitani claim was brought back to Palermo by American gangsters who were deported to Sicily. But the true *Mafia* is overwhelmingly rural in origin and territory.

There is still a *Mafia* in western Sicily today but no one there calls it that. There, like its counterpart in Calabria, it has always been called the *Onorata Società*. It is also known by other names such as *la santa mamma* (the Holy Mother), or increasingly today, *gli uomini qualificati* (qualified men or specialists). Members do not call themselves *Mafiosi* and no one else calls them that. They are known simply as *gli amici*, the friends, or *gli amici degli amici*, the friends of friends.

Despite their secrecy we know enough about these societies to make a few generalizations about them as a form of social organization. First, *mafia* as a cultural model is not unique to Sicily although, like the southern Italian culture which produced it, it is most visible there. The Neopolitan *Camorra* and the Calabrian *Onorata Società*, though they differ from Sicilian *Mafia* in some features, are obviously of the same genus.

Mafia in the sense just described is more than a secret society. It is, as the Italians insist, a particular and peculiar state of mind. It is a basic form of social organization developed in the south of Italy to control or negotiate social conflict where there is a weak or absent state. The *Mafioso* operates as a middle man in a vacuum of political values, structures and organizations. He is a broker—although not always an honest one—who operates as a network builder and monitor between and among elements in an unstable system. To the *Mafioso* and his clients, this seems to be the natural order of things. Given the weakness of the state and the insecurity of the poor living under it, he offers protection but also a form of representation to the populace who have no other means of negotiating with the power structure. The base of *Mafia* power is the personal relationship, for the *Mafioso* reduces every social relationship to a personal level, a level in which he can feel and perform in a manner superior to other men. Because he has "friends"—he is more of a man than others. Where justice is powerless, says the *Mafioso*, there the injured must have recourse to his own strength and that of his friends. When the state does become strong or authoritarian—as in fascism—the *Mafia* begins to fall apart. After the Allied Occupation it reappeared in western Sicily.

Just as there are many local *mafie* in Sicily rather than a unified central *Mafia*, so they serve many functions. It is involved in criminal

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activities and oppression but it is also an integrative system. It does serve as a means of social control, a mechanism for the management of social conflict (admitting that it generates some of the conflict itself) and for the provision of services to a community that would otherwise remain unserved.

The old world *Mafia,* thus, is an outgrowth of a rudimentary ideology and system or organizing society institutionalized in the culture of the south of Italy and particularly in Sicily for the management of specific forms of social conflict. It seems fair to assume that anywhere and everywhere southern Italians are found in large enough numbers to sustain the culture, the strength of this ideology and the cultural imperatives that produced it would lead them to respond to similar social conflict and disorganization by importing or resurrecting the *Mafia.*

III

In the decade from 1900 to 1910, a total of 2,104,000 Italians emigrated to the United States. Eighty per cent of them came from southern Italy and Sicily; most of these settled in eastern cities in self-contained "Little Italies" where each tenement re-established the old village square. The Italians succeeded in bringing their villages with them and that village culture—not any new Italo-American or even any emergent pan-Italian culture—set the standards for their beliefs and behavior. All of the facets of that village culture—the primacy of ties to kinfolk, the spell of religion and superstition and the disdain for extra-familial foreign laws—came with them and settled in the same urban villages. One question, of course, is this: Did *mafia* also come with them and is it also a part of what they have retained?

It is deceptively simple to answer this question with a well-documented "no." The Sicilian *Mafia*—or, for that matter, the Neopolitan *Camorra* or Calabrian *Onorata Società*—could not and did not migrate as organizations to the United States. It took hundreds of years for *mafia* to develop within the cultural values of the south of Italy and just as long for the behavior associated with it to be operationalized in viable organizations. Despite strong cultural affinity, the Sicilian *Mafia,* for example, found the eastern end of Sicily inhospitable and so remained in the west. Why should it attempt to cross the ocean?

The conditions of the Italian migration to the United States also underwrite a negative answer to this question. It must be remem-

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bered that this was a proletarian emigration and was considered often a temporary move by most of the emigrants. At the time of the migration, *all* of the heads of the local *Mafie* in Sicily were men of some wealth, considerable power and prestige and hard-earned status. There was no reason for them to leave the island until Mussolini and his police prefect Cesare Mori began arresting and killing suspected *Mafiosi* in the 1920's. All of this is not to say that some few individual *Mafiosi* or *camorristi* did not come over as part of the emigration. Whole villages moved to America virtually *en masse* and minor *Mafiosi* and *Camorristi* probably were present among them, but they were few in number and almost certainly did not represent any potential leadership or they would have remained in Italy. What is more important is that they, like the vast majority of southern Italian immigrants, came as individuals and probably not to stay. The possibility that they were an advance party sent ahead to seek new territory and colonize is patently absurd to anyone who comprehends *Mafia*. The local *Mafie* were rooted in sentiment and power to the local community; neither was there any central organization or grand council that could make such a decision on a wider than local level.

Having set aside the contention that the *Mafia* or *Camorra* set up branch offices in the new world, it would be comforting as well as plausible to fall back on our distinction between *Mafia* and *mafia* and say that what the migrants did bring was some primaeval cultural sense of *mafia* with them which they used as a model for organizing crime. They did, and it has served them well, but that cultural model alone did not produce present-day Italo-American criminal syndicates. The emergence of Italo-Americans in a dominant role in organized crime is a post-1930 phenomenon. The strict diffusionist approach that sees only *Mafia* in Italo-American crime syndicates must therefore assume that the concept of *mafia* lay dormant among southern Italian immigrants for decades and then suddenly emerged as a model to organize Italo-American involvement in crime. Further, it must assume nothing was happening in the acculturative experience of Italo-Americans that allowed them to find better and already proven models in the native American setting. These assumptions do not bear up under analysis.

However potent the *mafia* model was in southern Italian culture, it had to be Americanized to be successful here. The social history of the Italo-Americans in the first thirty years of the century indicates the importance of southern Italian culture to the development of Italo-American criminal syndicates. However, social and economic conditions here were even more important.

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IV

A number of social scientists have analyzed the relationships among ethnicity, organized crime and politics in American life. Daniel Bell describes the transfer in crime of one succession of European immigrants to another as the "queer ladder of social mobility;" in coming out of the slums, organized crime is one of the first few rungs. The Irish came first and early Irish gangsters started the climb up the ladder. As they came to control the political machinery of the large cities, the Irish won wealth, power and respectability through consequent control of construction, trucking, public utilities and the waterfront. The Irish were succeeded in organized crime by Jews and the names of Arnold Rothstein, Louis "Lepke" Buchalter and Jacob "Gurrah" Shapiro dominated gambling and labor racketeering for a decade. The Italians came last and did not get a commanding leg-up on the ladder until the late 1930's. They were just beginning to find politics and business as routes out of crime and the ghetto into wealth and respectability in the 1950's when the Kefauver hearings took place. Since then, the assumption seems to be that when they advance into business and politics, Italo-Americans somehow take the *Mafia* with them. Unlike the Jews and Irish before them, their movement into legitimate business and politics has not won them respectability. Instead, their presence indicates corruption and signals an attempt to "take over" control for illicit purposes.

In the early days of the Italian ghettos the crimes reported in the press were, in fact, *Italian* crimes. They were committed by Italians against other Italians. They were the traditional crimes of the *Mafia* and *Camorra*. And they were crimes which the Italians brought with them—extortion through threats of death and bodily harm, vendettas or blood feuds particularly between Neopolitans and Sicilians and kidnapping of brides. Almost as soon as they arrived, the Italians brought public notice to crime in the ghetto through the *Black Hand* a series of threats, murders, maimings and bombings as a means of extorting money from fellow immigrants. *Black Hand* activities, however, were unorganized; they were the work of individual extortionists or small gangs and there is no evidence which suggests that there was any higher level or organization or any tie with the *Mafia* in Sicily or *Camorra* in Naples. Without the protective network of family and kindred, the immigrant was easy prey to anyone who appreciated his vulnerability and individual entrepreneurs or small gangs could operate freely in the police-less colonies. It is interesting

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that in the dozens of *Black Hand* letters we have seen, never once is there an explicit or implied threat that the *Mafia* or *Camorra* was in any way involved. What seems clear from all of the evidence is that the *Black Hand*, which lasted about 15 years (from the turn of the century to the first World War) was a cultural but not an organizational offshoot of *Mafia* and was completely Italian in origin and character.

It was the immigrants themselves who finally did away with the *Black Hand*. As was true in the earlier frontiers of the westward expansion, the lack of established patterns of social control and sanctioned codes of behavior provided an environment of "lawlessness" where conflict and violence were always just below the surface. Within the ghettoes, protection against crimes was left almost entirely to the immigrants as a result of that characteristically American attitude toward minority group crime which stands aloof so long as they keep it among themselves. Faced with an absentee government, the immigrants did just as they had done in Italy and just what a previous generation of American frontiersmen had done for the west. A rough and ready system of internal policing developed along with a set of "courts" which arbitrated disputes and meted out justice to wrong-doers. In Italy the custom had been to go to a "man of respect"—a leader in the *Mafia* or *Camorra*—for redress of ills and protection from the vagaries of peasant life; in the Italian-American ghetto it was the same and the informal courts held continue in diminished power even today. As recently as 1967, Mayor Lindsay of New York City found it expedient to call on members of an Italo-American criminal syndicate to "cool off" intergroup hostility between Italo-American and black gangs in Brooklyn. And they did it.

While the immigrants policed the ghetto, their sons guarded its boundaries. Just as the Irish and the Jews had done before them, they formed into street-corner gangs to escape overcrowded homes and to seek compatible peer-group relationships. One important function of these gangs was to protect the turf within the colonies from marauding bands from outside. The bonds formed in these street gangs marked the first extra-familial socialization for Italian youngsters and they have persisted into adulthood.

There seems little question that all of the social conditions and the cultural imperatives that led to the formation of the *Mafia* and other secret criminal societies in the south of Italy did, in fact, exist in the American Little Italies by 1920. As we have seen, the immigrants brought the cultural imperatives through which fathers commanded and mothers were treated with respect. The social conflict produced

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by harsh and impoverished living conditions, exploitation by employers, lack of access to routes of social mobility, the remoteness of governmental authority, all of which had plagued them in Italy, were present in the ghettoes as well. Yet no Mafia-type organization developed prior to 1920 because two critical elements were missing. It had taken the *Mafia* and *Camorra* hundreds of years to develop in the friendly soil of southern Italian culture; twenty years was just not time enough for a new organization to take root in the United States. Neither was there the established pattern of relationships—the social system of *mafia*—because the migrants had come as individuals and, despite the affinities of co-villagers in the tenements, new links, new patterns of authority and new sources for power and profit had to be established. These same cultural and linguistic difficulties made it impossible for any emergent Mafia to operate outside the colony in these early years. As the son of a Sicilian immigrant who was a well-known *Black Hander* in New York's Lower East Side Italian colony in the early 1900's explained to us:

> Can you imagine my father going up-town to commit a robbery or a mugging? He would have had to take an interpreter with him to read the street signs and say "stick 'em up" for him.

After 1920, however, two developments in this country and one in Italy changed all this. In the United States the immigrant's children were becoming Americans. Italo-Americans have managed to cling to their familialism more tenaciously than any other ethnic group, but culture contrast continues to loosen the grip for each succeeding generation. Educated in American schools where individualism, not family loyalty, was the basic lesson, they formed new friendships in the street gangs. These new alliances crossed the old village and provincial lines and in some cases even reached out into other ethnic groups. Then national Prohibition provided a new source for illicit profits and so a new and accelerated route to riches for both immigrant and second-generation Italo-American. This new market provided the source for power and profit which allowed an American Mafia to form in the ghettoes. Soon after Prohibition, small sweatshop stills were set up within the Italian colonies to distill the alcohol essential to producing liquor. Italians had traditionally produced their own wine and this "illegality" had been ignored by the American authorities before Prohibition. Converting home wineries to home stills was not difficult and the immigrant alcohol cooker could produce enough for himself and, if he was so inclined, enough to sell to friends and neighbors. Some of the home distilleries became large

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enough to make significant profits and the alcohol produced in these larger stills, combined with that collected from smaller stills, became an important source for the producers of illegal whiskey.

While the immigrants could produce and even organize collectives for illegal alcohol, they were unable to move out of the colonies to engage in the actual distribution process. Not so their sons who, through membership in street gangs, were being initiated into the world of the gangster. It is important to note that while the flamboyance of Al Capone has given an Italian characterization to the popular stereotype of Prohibition era gangster, Italo-Americans by no means dominated the rival bootleg gangs. The names of O'Bannion, Moran and O'Donnell, and of Buchalter, Kastel, Lansky, Siegal, Weiss, and Zwillman were far more important if less notorious than those of Aiello, Capone, or Torrio. Italo-Americans more often filled lower echelon, enforcer-type roles than leadership positions in gangs, although some individuals, like Capone, did rise to prominence. The role-model ideal for these aspiring underlings was not the old-country oriented *Mafioso* or *Camorrista* who were contemptuously called "greenhorns," "greasers," "handlebars" or "Moustache Petes," but the more sophisticated Irish and Jewish mobsters who had mastered the secrets of business organization. While the profits from bootlegging afforded the second-generation growth in the demi-world of organized crime gangs, they also produced important developments among the immigrants in the ghettos. Since the immigrants could not handle large scale distribution themselves, an informal alliance developed between immigrant and second-generation Italians and between the second-generation and non-Italian gangsters, particularly the Jews. Then, after Mussolini's brief honeymoon with the Sicilian *Mafia* ended in the mid-1920's Sicilian *Mafiosi* found their kinsmen in the United States a safe haven and a number of them did come reinforcing the Sicilian culture base among the immigrant bootleggers. By the mid-1920's all of the ingredients necessary for the formation of a new Italo-American *Mafia* were available in the ghettos and it remained only to mix them in the proper proportion within these protective walls. Just such an organization does seem to have developed.

V

The name most frequently associated with this emergent Italo-American *Mafia* is the *Unione Siciliana*. While the *Unione* is often cited in government reports, the origin of the name and the structure

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of the organization are lost in the nether world of law enforcement informants. In our own field work we often hear reference to it. One of our respondents, for example, a Sicilian-American involved in bootlegging activities in Brooklyn throughout the Prohibition era, told us:

> . . . at that time (1928) all the old Sicilian "moustaches" used to get together in the backrooms of the club—it was a *fratellanza* (brotherhood) and they used to call it the *Unione*. They spent a lot of time talking about the old country, drinking wine and playing cards. But these were tough guys too, and they owned the alky cookers and pretty much ran things in the neighborhood. They had all of the businesses in Red Hook locked up and they got a piece of everything that was sold. If some guy didn't pay up they leaned on him. Everybody paid them respect and if some guy caused trouble in the neighborhood they called him into the club and straightened him out.

The *Unione Siciliana* was an informal confederation of local groups of Sicilian-Americans involved in extortion and protection in the Little Italies and in bootlegging activities particularly in organizing the cottage-industry home-distillers in the ghettos. By the late 1920's this organization had all of the cultural and organizational features of a new *Mafia* in the United States. Like the *Mafia* in Sicily, it served the Little Italies as a means of social control, a mechanism for the management of social conflict (and again like the Sicilian *Mafia,* generated some of the conflict itself) and as a source for illegal services to a public which would otherwise remain unserved. Its link with the outside world was through the American-born or American-raised second-generation. The colonies could offer a culturally supportive base for the new *Mafia* but not the production-supportive substructure necessary to nurture the new social system.

By the end of the 1920's, however, the stage had been set for the inevitable clash between the immigrants of the *fratellanza* or *Mafia*-model *Unione* and the aspiring and rising second-generation Italo-American gangsters who were now moving into leadership roles in gangland. Once again changes in the general society intervened and hurried organizational change in crime. First the Great Depression and then the inevitability of the repeal of Prohibition forecast the end of an era of prosperity where there was enough illicit profit for everybody. With the end of Prohibition it became necessary to find new areas for exploitation to continue the flow of dollars. Some areas such as gambling and labor racketeering were reprehensible to the now-old "Moustache Petes" who saw such activity as unworthy of a man of respect. Other, less noble conflicts of interest and influence were also involved as various groups struggled in the inevitable quest for

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power. It was this conflict between the old *Mafia*-oriented *Unione* and the new American gang-oriented Italo-American syndicates which seems to have brought the situation to a head and destroyed the *Unione*.

The drama began in 1930 when Giuseppe Masseria, a Neopolitan prominent in the gang world of New York, issued orders to exterminate a number of Sicilian "old Moustaches" whose association was with the Mafia-like *fratellanza* groups. There had been continuing speculation as to the reason. Some say it was a conflict over future areas for exploitation, others that he was simply hungry for greater power. The move touched off a war in New York that eventually spread throughout the country. With Masseria were those non-Sicilian, Italo-Americans such as Vito Genovese, Joe Adonis and Frank Costello whose alliances with non-Italian (principally Jewish) mobsters had been forged in the world of the gangs. Opposed to Masseria were the old-time Sicilian-American leaders who had risen to prominence in the *Unione* many of whom had come from or around the small town of Castellammare del Golfo on the Western coast of Sicily. The Castellammare, including Joseph Bonnano, and other Sicilians such as Joseph Profaci and Gaetano Gagliano gathered behind Salvatore Maranzano and each group launched attacks on the other.

The war raged throughout 1930 and the "old moustaches," particularly the Castellammare, were the most frequent victims. In one forty-eight hour period close to 40 of the old Sicilian leaders were killed in a purge that rivalled the "night of the long knives" in Nazi Germany. Despite his victories in these battles, Masseria lost the war and sued for peace, but Maranzano refused to come to terms. Masseria retreated to a heavily armed fortress in New York determined to hole up and hold out. His followers, however, seemed unwilling to go with him and five of his lieutenants—Genovese, Luciano, Livorsi, Straci and Terranova—surrendered to Maranzano and on April 20, 1930 the Castellammarese War came to an end as three of them executed Masseria in a Coney Island restaurant as they ate dinner together. Maranzano was assassinated by his own lieutenants on September 11, 1931.

Whatever else it was or did, the Castellammarese War brought the short melancholy life of the Italo-American *Mafia* to an end. The old "Moustache Petes," the custodians of the *mafia* tradition were either killed off or passed in obscurity. The younger immigrants and the second-and-succeeding-generations saw in the urban gangster, not the *Mafiioso,* an American role-model filled with the excitement and promise their parents' nostalgic associations with social banditry of

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the *Mafia* and *Camorra* could no longer provide. They formed gangs of their own in the new form of urban criminal syndicates not the old rural brotherhoods. The new syndicates did not follow provincial lines, and working relationships with non-Italians, particularly Jews were established.

After 1930 the Italo-Americans succeeded the Jews as the major ethnic group in the ranks of organized crime. At about the same time that they reached prominence in organized crime, they also began to gain some political power in major cities particularly in the Middle Atlantic and northeast States which had been the settlement areas for a vast majority of southern Italian immigrants. Now, the new judges, the new lawyers and prosecutors, councilmen and even police had grown up in the Little Italies along with the new leadership in organized crime. They had lived together as children and strong bonds had been established; still they kept the associations through friendship and marriage. Alliances of power, friendships and kin relationship all merged and today this presents a difficult if not impossible job of sorting out those which are corrupt or corrupting from those which merely express the strength of kinship relations among southern Italians and their descendants. Yet there is no question that family structure forms the basic network which ties Italo-Americans together in organized crime and that kinship is the pivot for that integration. The Mafia-model *Unione* was a peculiarly southern Italian institution which could not and did not survive long in the new world. The acculturation process works in crime as elsewhere and the values which activated and informed the old *Mafia* model were no longer prized. But, for Italians at least, blood really is thicker than water and while the organizational form of *Mafia* disappeared, it has left a heritage of kinship which still integrates crime families and characterizes the involvement of Italo-Americans in organized crime.

VI

Since the hearings of the Kefauver Committee two decades ago, and increasingly since the report of the 1967 Task Force on Organized Crime of the President's Commission on Law Enforcement and Administration of Justice, government law enforcement agencies and their consultants have insisted that Italo-Americans in organized crime have, in fact, created a national organization.

La Cosa Nostra is the name government sources currently assign to this confederation of Italo-American criminals that they trace back

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through the *Unione* to the Sicilian *Mafia*. Whether the name is an invention by Joe Valachi or whether it is simply a term commonly used by members of Italo-American criminal syndicates to identify business activities of common interest it is not the name of a formal organization. The model which the Task Force report uses for the *Mafia* is a parody of the American corporate model. Leaving aside, for a moment, its international connections, *Cosa Nostra* seems not much different from the Bell Telephone System. Like Bell, it is described as a "nation-wide . . . cartel . . . dedicated to amassing millions of dollars' through the provision of services to the public. Unlike the Bell System, however, the services of *Cosa Nostra* are described as "illicit" and its ultimate aim is the corruption of "the basic economic and political traditions and institutions" of the country. Again like the Bell System, this national cartel is a confederation of local syndicates or "companies" which function with some independence at the local level but are subject to corporate policy decisions by a "national commission" which, structurally, at least, sounds like a board of directors. Just as "Ma" Bell rules over a family of local companies all of which provide the same service to their communities, so *Cosa Nostra* is made up of local units differentiated only by territoriality for each can "participate in the full range of activities (of) organized crime." Like any large corporation, this organization continues to function regardless of personnel changes because *Cosa Nostra's* local organizations are "rationally designed with an integrated set of positions geared to maximize profits." The descriptions of the local units or "families" continue the analogy in terms of positions, functions and authority structure. The position of *caporegima,* in the *Cosa Nostra,* for example, "is analogous to plant supervisor or sales manager" in a business organization and the *sottocapo* or "underboss" is "the vice-president" or "deputy." And like the Bell System, *Cosa Nostra* maintains contacts with its counterparts overseas. What this describes, of course, is the rational, deliberately designed *formal* organization constructed to achieve a set of specified goals. It sees "organization" as a chart describing positions, a hierarchy of jobs to be filled and carried out and as a blueprint which can be used to construct and reconstruct organizations everywhere.

Yet Italo-American crime "families" are *not* organizations in this sense at all. They are not rationally designed and consciously constructed; nor are they hierarchies of organizational positions which can be diagrammed or changed by merely redrawing the chart.

There is *no* formal organization or confederation of Italo-Americans in organized crime called *Mafia, Cosa Nostra* or anything else.

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There are numbers of Italo-Americans who are involved in organized crime, they do form highly organized local syndicates (or "families") and the families do cooperate with each other in licit and illicit activities. But they are not held together by a national membership organization with a ruling council or even some shared conspiracy in crime. They are joined by the looser form of obligations and protections of the south Italian system of family and kinship.

Italo-American criminal syndicates are rightly called "families" because the relationships established within them produce kinship-like ties among members, ties which are given greater power when they are legitimated through marriage or godparenthood. Every "family" member knows that every other member has some duties toward him and some claim on him. Whether the relationships are based on blood or marriage as they often are, or are fictive as in the intricate pattern of ritual alliances through godparenthood, it is also kinship which ties generations together and allies lineages and "families."

Membership in a "family" is not like membership in a gang or an organization. A member does not receive a salary. He is usually engaged in his own activities. Members of families may even be competitive with each other. Nor does a member of a family necessarily give a share of his earnings to the head of the family. The closest model is a feudal one wherein a member swears fealty, receives protection and provides his services to protect others when it is asked.

It is this feature which sets Italo-American crime "families" off from the gangs in organized crime of previous ethnic groups. Every government report, after the *de rigeur* disclaimer that "of course, the vast majority of Italians in this country are god-fearing and hard-working" goes on to marvel at how tightly knit Italo-American crime families are and how closely structured the network among "families." The most frequently used term is "clannishness." One report describes this clannishness as "the cement that helps to bind the Costello-Adonis-Lansky Syndicate;" another comments that among Italo-American crime families, "a certain clannishness contributed to the retention of the custom of clannishness." Once again, the term is apt because, if one sets aside the literal view that clans are descent groups from a real or imagined common ancestor and takes the common sense view that they are alliances of lineages, then Italo-American criminal "families" are very much like clans.

While they do not maintain a fiction of descent from a common ancestor, Italo-American crime "families" are actually a number of

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lineages linked together into a composite clan. Like clans everywhere, these crime "families" enter into exchange relations with each other and form alliances which, once formed, are perpetuated. Like clansmen everywhere, members treat each other as agnatic brothers and acknowledge mutual rights and obligations on a kinship pattern however remote they may be genealogically. Each clan has its own territory. Some clans grow too large to maintain the kinship-like bond and divide, sometimes splitting through internal dissention, sometimes sending off segments to new clan-territories. Some clans decline and die out or lose their territory in warfare. The clan, because of its kinship base and its territoriality, can establish and maintain its own rigid code of familial law and pass authority from one generation to another.

For over three years now, we have been looking at kinship relationships in Italo-American crime "families" in various parts of the country. The findings clearly indicate the role of kinship in integrating individual "families" and in creating alliances among them which perpetuate power. In the New York-based Italo-American "family" which we have most closely examined, every one of the 15 members in leadership positions is related by blood or marriage and frequently by godparenthood as well. Data we have gathered on "families" in other parts of the country show the same kinship-based organization. The chart below, for example, traces relationships among the 20 leading "syndicate" families in a major mid-western city. Not only are *all* 20 families intermarried, they have also formed alliances through marriage with crime families in Buffalo, New York City and New Orleans.

What the chart cannot show, however, is how intricately woven this web of kinship is and how it ties "families" in various parts of the country together. Consider just one alliance, that between the Tocco and Zerilli lineages. William Tocco married Rosalie Zerilli who is the sister of Joseph Zerilli. Joseph Zerilli's daughter Rosalie is married to Dominic Licavoli. Dominic Licavoli's brother Pete married Grace Bommarito. William Tocco and Rosalie Zerilli's son Anthony is married to Carmela Profaci, daughter of Joseph Profaci who was a "boss" of a "family" in New York City. Carmela Profaci's cousin is married to the son of Joseph Bonanno, a now-deposed former "boss" of another New York family. Profaci's other daughter Rosalie married the son of Joseph Zerilli. (Remember that Joseph Zerilli is the brother of Rosalie Zerilli who is married to William Tocco.) Willam and Rosalie Tocco's son Jack Tocco married Antoinette Meli who is the daughter of Angelo Meli. Antoinette's brother

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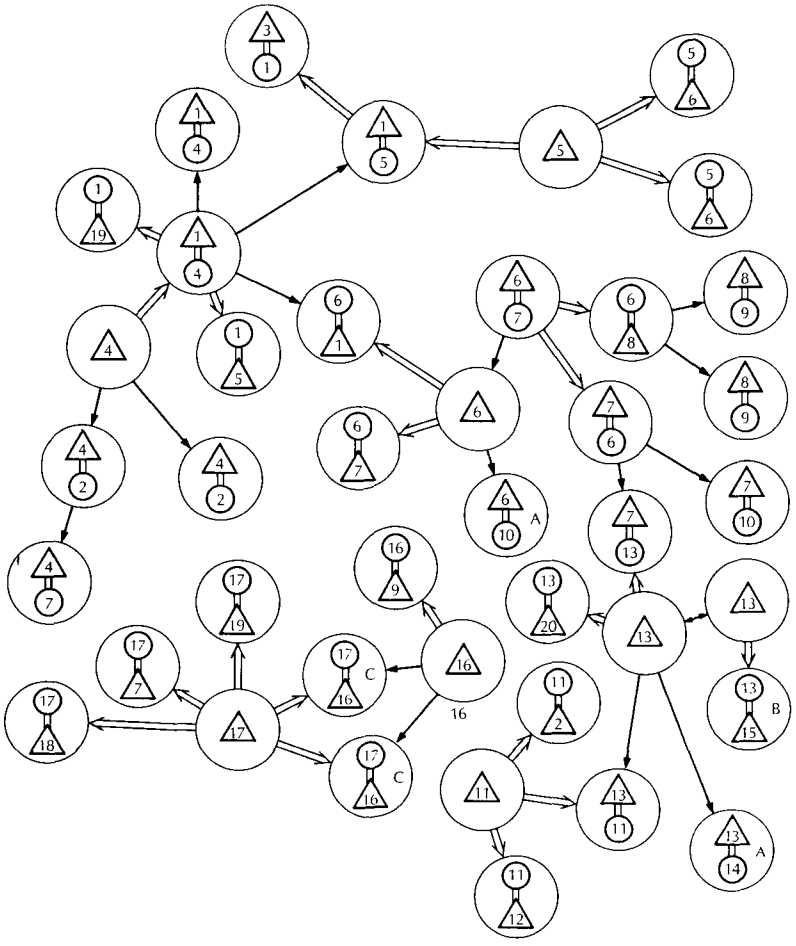
MARRIAGE AND KINSHIP LINES AMONG 20 FAMILIES IN A MIDWESTERN CITY



Marriage ties
Daughter
Son
Brother

Male
Female

A. New York-New Jersey
B. Up-State New York
C. New Orleans

1. Licavoli
2. Orlando
3. Abate
4. Moceri
5. Bommarito
6. Zerilli
7. Tocco
8. Corrado
9. Vitale
10. Profaci
11. Perrone
12. Renda
13. Meli
14. Livorsi
15. Bufalino
16. Matranga
17. Priziola
18. Polizzi
19. Cammarata
20. Lucido

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Salvatore Meli married Dolores Livorsi, the daughter of Frank Livorsi, who is a functionary in another New York area "family." Dolores' sister Rose is married to Tom Dio, a member of a New York family involved in labor racketeering. Jack Tocco's wife's (Antoinette Meli) cousin Marie is married to William Bufalino, a leading member of an up-state New York "family." Jack Tocco's wife's brother Vincent Meli married Pauline Perrone, daughter of Santo Perrone. Pauline's sister is married to Augostino Orlando; her other sister, Mary Perrone is married to Carl Renda. This network of alliances intersects with several others which reach into "families" all over the country and is strengthened by an equally complex pattern of godparent-godchild relationships.

This same basic pattern of kinship organization occurs in every major syndicate "family" we have looked at in this country. Not only are individuals within "families" related, there is widespread intermarriage among "families" throughout the country. Of the more than 60 "*Mafia* bosses" identified as participants at the famous Apalachin meeting in November 1957, for example, almost half were related by blood or marriage, and even more if godparenthood is included as a kin relationship. At one point, three of the five "bosses" of New York's "families"—Carlo Gambino, Vito Genovese, and Thomas Lucchese—had children who were inter-married.

These relationships are actually a series of complex alliances binding together lineages in the same "families" together for systematic exchange of services. And in all relations with outsiders, a man acts not simply as an individual but as a representative of his clan.

This clan pattern of organization also provides a common system of roles, norms and values which not only regulate the behavior within the "family" but also structures relationships among families. It is the universality of this clan organization and the strength of its shared behavior system which makes Italo-American criminal syndicates seem so similar and suggests a national or even international organization. Southern Italians really do not accept any collective larger than the extended kin group and so are reluctant to recognize any moral or social force outside the family. When the extra-familial institutions are alien, as they are in this country, the reliance on family-centered moral systems is re-inforced.

It is this shared, kinship-based moral code, rather than fear or coercion which defines behavior within Italo-American crime "families." And it is a collective amorality toward extra-familial authority structures which binds the "families" to each other and to the Italo-American community. The "code of silence," for example, is hardly

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an exclusive feature of *Cosa Nostra* or even *Mafia*. In our research on secret societies, we have yet to find one where secrecy is not part of the basic code. What is *different* about Italo-Americans involved in organized crime is that their secrecy and silence in the face of official inquiry are not conditions of membership in some organization but are ingredients of culture passed on through the socialization process.

VII

The kinship model which ties Italo-American criminal "families" together is now disappearing. After three generations of acculturation, the Italo-American family is losing its insistence on father-obedience and mother respect and the authority structure in the crime "families" is changing too. Newer, utilitarian alliances with power establishments in the larger society are replacing the traditional generational authority structure. As American culture continues to errode the strength of family and kinship in Italo-American culture, the "families" must weaken and will give way to the next wave of aspiring ethnics, just as the Jews and the Irish did before them.

The evidence of this displacement is already apparent. In New York City, for example, blacks, Puerto Ricans and Cubans are now displacing Italo-Americans in the policy or numbers rackets. In some cases, particularly in East Harlem and in Brooklyn this is a peaceful succession as the Italo-American "families" literally lease the rackets on a concession basis. The "family" supplies the money and the protection, the blacks or Puerto Ricans run the operation. In other cases we know of in central and west Harlem, however, the transition is not so peaceful and the Italian syndicate members are actually being pushed out. Current estimates are that upward to one-fourth of the control and operation of the policy racket in New York has already changed hands.

The outlook for the Italian crime "families" is not a promising one. Ethnic succession in organized crime will force them out, but their movement into legitimate business areas whether as "families" or as individuals is blocked because it comes at a time when interest in organized crime infiltration of business is at its height. They might, of course, go underground as the *Mafia* did in Sicily under Mussolini. But even if they do, there seems little chance they will re-emerge for Italo-American culture will not sustain them.

The "conspiracy" idea seems to be fading as well. Recently after

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a series of demonstrations and protests by Italo-Americans in the spring and summer of 1970, the Department of Justice dropped the terms *Mafia* and *Cosa Nostra* as generic for organized crime. Nixon administration spokesmen insisted that the decision was in no way related to the pressures of the demonstrations, which were, of course, attributed to the *Mafia* itself, but was the result of administration sensitivity to the argument that large segments of organized crime are obviously not Italian-dominated.

An era of Italian crime seems to be passing in large measure because of the changing nature of the Italian community and its inclusion in the society. To that extent, the pattern of Italian crime seems to be following that of previous ethnic groups described in Bell's essay "Crime as an American Way of Life." But what is distinctive about Italian crime is the "myth" that went with it, a myth that arose more out of the need of Americans, nourished in a populist politics, to believe in formidable conspiracies as a means of explaining reality. As I have tried to show, a *Mafia* did—and does exist; but its character is a compound of a cultural attitude and a web of kinships, which are attributes peculiar to the Italian scene, rather than the "big business" pattern, which is a projection of the American imagination.

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"Capitalism" and "the free society"

JOHN K. JESSUP

In their joint autopsies on capitalism (*The Public Interest*, Fall 1970), Daniel Bell asks for time—"a decade or more"—to fill the resulting vacuum in the tormented social system, and Irving Kristol promises us time "if only because the modern era has failed to come up with any plausible alternatives" to liberal capitalism. One good use of that time, whether months or years, would be to recheck the autopsy, re-examine the life of the deceased, and make sure we know how much of it is dead and of what causes. As pumped up by morticians Kristol and Bell, the corpse only faintly resembles the living system some of us thought we knew.

Let me concentrate on what I consider Kristol's mistake. He has wrapped the whole complex history of American capitalism in the myths that Weber and Tawney derived from its passing compatibility with the dogmas of Calvinism and Darwinism. He tells us that one of capitalism's three "promises" was to encourage or enable a virtuous life (for the individual) and a just society (for all). No true friend of any strictly economic system would file any such claim. It is true that foregoing consumption is a sure way to form capital, and that both Calvinists and capitalists believed frugality to be a virtue. It is true that Governor Bradford resorted to rugged individualism to save the Plymouth colony. It is also true that in the era of social Darwinism, which lasted approximately from early Herbert Spencer to late Elbert Hubbard, the "gospel of wealth" proclaimed in 1889 by Andrew Carnegie was enthusiastically preached by many capitalist apologists, among them Bishop Lawrence of Massachusetts who declared that "godliness is in league with riches." But these years are quite rightly described by Kristol as a "bizarre and sordid episode" which "could not last; and did not." The social Darwinists were nevertheless the only serious men in our intellectual history who would have agreed with Kristol's attempt to extract the promise of "a just society" from the capitalist economic system.

What economists did claim, and still can, is that a free market system apportions its rewards to individuals, both capitalists and workers, with what John Bates Clark called "a certain rough justice." But this was and is *economic* justice, the reward for having given satisfaction to the sovereign consumer; it had and has nothing to do

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with "moral merit" (the phrase ascribed to an imaginary apologist by Hayek). In the minds of the Americans who have lived under capitalism, what Kristol calls "the moral moorings" of success were never all that deep. These people did not support capitalism for moral reasons. If they had—if Congress, for example, had agreed with John D. Rockefeller when he told them that "the good Lord gave me my money"—how could they have got up the nerve to pass the Sherman Act?

The Americans I am speaking of—let us call them the silent majority of the 19th century—obviously placed their expectations of justice (not to mention their criteria of virtue) not in the economic system but elsewhere: for social justice, in the political and juridical systems; for moral justice, in their various churches. There are two questions here. The first stems from Kristol's assumption that they expected rewards for moral merit from capitalism: why then did not the unrewarded creep away to die of self-reproach or public obloquy, or better yet revolt violently against the whole crude Weberian frame? Instead, most Americans (and most were not conspicuous successes) enjoyed and supported the capitalist system. Even the wage slaves stayed away from the socialist parties in droves; the American workingman, so Werner Sombart discovered, not only did not object to capitalism, "I believe he loves it." The answer to this puzzle is too simple for anything but a brief peroration, and will be deferred. So I proceed to the second question: if the average American did not make capitalism his criterion of political and moral justice, how were these deep needs satisfied?

First, as already suggested, they were satisfied by an increasingly egalitarian franchise and an intermittently populist politics, which has kept reform legislation always within reach of an outraged sense of injustice, as under the Square Deal, the New Freedom, and the New Deal. Second, and more steadily if more symbolically, they have been satisfied by the judicial system. Certainly Americans always approached their court houses in a more reverent spirit than they did their market places. In small towns the court house stood opposite and equal to the church and its strange rituals were, and were generally believed to be, designed by long tradition to make justice in each case more certain. If reverence for the courts has diminished in recent years, as it has, why should capitalism be blamed rather than the state of our courts and our jurisprudence?

Third, as to moral justice. Americans have been accustomed to seek it in the same place they looked for moral authority and guidance, which was never the market, nor yet the courts or Congress or the White House, but the church. If, as Kristol claims, an "amiable philistinism" was always "inherent in American bourgeois society," so was an amiable Christianity—the more amiable as the rigorous outlines of its Calvinist origins were blurred by the social gospel, by the doctrine of stewardship (philanthropy) and by the waning sense of personal sin that accompanied the amassing of national wealth. In a considerable understatement, Ralph Gabriel has pointed out that

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the Protestantism of 19th century Americans was largely ex-Calvinist and that "the dispensing of comfort was one of the most important of their pastor's duties." Certainly the loser in the capitalist rat-race went to church before he went to his gun-rack. If what he got there was opium, it was a more benign variety than what drop outs take now. It may be that the losers under capitalism were self-deceived in their support of it; but it is a libel to accuse them of putting their super-egos in the market along with their hopes, bets and economic efforts.

Why did Americans never declare war on the bitch goddess? Why have they mostly supported the capitalist system? Not because they looked to it for social justice; except for economic justice, quite narrowly defined, they looked elsewhere for that. And not because they did not value social justice. They liked capitalism because it was so very suitable to something they valued even higher: namely, personal freedom. For people who wanted above all to decide for themselves the terms on which they made their living, a contract society with all its risks and rigors had obvious advantages over the status societies they or their fathers had left. Capitalism has alway offered a greater variety of careers—jobs, trades, markets, professions, tenures—to the young than any other system. If it never promised either success nor justice, it did promise opportunity, and it is for this that Americans have cherished it. Matthew Carey, America's proto-economist, based his arguments for protectionism on the expectation that it would still further multiply the choice of jobs for the young of the Jackson era.

Finally, the absence of social justice in capitalism—which Kristol now mourns and I claim was never there—was in any case never a very serious drawback. Believers in opportunity preferred to bet on their own brains, cunning, and energy, but also on their luck. The people who supported American capitalism were also capable of nailing millions of horseshoes over their barn doors and of queuing up for miles to get into the Klondike. A sane trust in luck has one agreeable social side-effect: the winner can take no moral kudos, the loser need take no moral blame, and his envy of the winner is without bitterness. Under capitalism, American entrepreneurs have probably trusted more to luck than any people since the fans of the Fortunatus legend. Clearly this admirable old impulse is still alive in America, though it is sad to see so much of it diverted to the sterile channels of Las Vegas.

But that is by the way. The point of my communication is that in autopsies on capitalism, we should not ascribe to it promises it never made nor diseases it never contracted. If it is dead or dying, perhaps the reason is that it gave too much scope for greed. If so, it has lost a loveliness it never claimed nor really had. In capitalism's best days, it could rely on other elements in the body politic to point out that greed is not a virtue. When these other voices fall silent or sound confused, why should a mere economic system be expected to take their place?

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A Reply

IRVING KRISTOL

Various letters and comments I have received, from people whose political views are usually close to mine, indicate that my essay ("When virtue loses all her loveliness") created a disturbance I did not anticipate. I certainly did not aim to be especially provocative. I was meditating, really, on the problem of why it is that our society, so extraordinarily successful in its material aspects, should nevertheless have so much difficulty these days in establishing it moral legitimacy. And, in so meditating, I was led to think that this had something to do with the movement, over the past century or so, from our society proposing one kind of self-definition ("capitalism") to its proposing another and different one ("the free society," to use Hayek's approving term). A "capitalist" order, I further suggested, assumed there to be a general, vague correspondence between personal merit and socio-economic achievement, whereas in a "free society" this correspondence is explicitly rejected. In such a "free society," one is rewarded for figuring out whatever it is the market is willing to pay for, and then accomplishing the transaction. Such rewards represent, in Jessup's term, "economic justice"—and in a "free society," this kind of justice is morally neutral, being dispensed impartially by the free market to pornographer or poet in accordance only with the principle of supply and demand.

The objections I have received to this analysis ("speculation" is probably a more apt term), all follow the line of argument drawn by Mr. Jessup—that "capitalism" always was a "free society," and that my distinction is illusory. I think I can best cope with this objection by asking a question: How is one to read the Horatio Alger stories—as *fiction* or as *fantasy*? As stories that, while about fictitious protagonists in a fictional world, still expressed a popular understanding of American social reality? Or as pure "escapist" fantasies, fairy tales for adolescents and adults, which the readers never connected with American social reality? I don't see how there can be any uncertainty about the answer: The millions of readers of Horatio Alger certainly took it for granted that what we now loosely call the Protestant Ethic (plus luck, as Jessup rightly emphasizes) had some bearing upon one's worldly station. Millions of Americans still believe it, which I take to be a good thing for the country. But the most sophisticated defenders of liberal capitalism—Hayek, Friedman, Jessup, etc.—deny it! I take that to be a very bad thing for the country.

Jessup, rejecting the notion that liberal capitalism ever presented itself as a "just society," divides the idea of justice into three parts. There is "economic justice," distributed in a morally neutral fashion by the free market. There is "social justice," provided by the state and the judiciary. And then there is "moral justice," which we get from

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our churches. Such a tri-partite universe strikes me as so odd as to be unnatural—I would even call it a sociological absurdity. How does one reconcile these three forms of justice? What if "moral justice" dislikes the results of "economic justice"? Does "moral justice" then have "the right" to violate "economic justice," if it can? Are relations among economics, politics, and morality to be settled by brute power politics? If not, by what criteria can one set of relations claim legitimacy over another? Such questions breed like fruitflies, and they are genetically incapable of giving birth to an answer. For the fairly obvious truth is that, if you reject the idea of a just society, then you have also rejected the idea of a legitimate society. For what legitimates a society if not the belief among its citizenry that it is just—that the economic, social, and political arrangements are *not* arbitrary or capricious?

Now, there is only one rejoinder that someone like Jessup can make to this point. It is the libertarian answer given by Hayek and Friedman: what legitimates a "free society" is the high degree of personal *liberty* it makes possible. In other words, if you start with personal liberty as an absolute ideal, needing no further justification, then a "free society" is legitimate by definition. Indeed, it is then the *only* legitimate society—again by definition. But this kind of scholasticism cannot satisfy those of us—and we are the immense majority—who have no such *dogmatic* attachment to liberty. Yes, individual liberty is a very fine thing, one of the very finest even. But order is also a very fine thing; and justice; and morality; and civility. All of these fine things have to be accommodated, one to another, in such a way as to "make sense" to the citizens of a society. A free market is a superb economic mechanism; but it is not self-justifying. Such justification is the function of a living political philosophy—a "public philosophy," in Walter Lippmann's phrase.

The idea of "capitalism" implied such a public philosophy. The libertarian approach, it seems clear to me, can only eventuate in an anti-public philosophy. Indeed, that is precisely how I should characterize Jessup's views. He envisions a society in which citizens are either escaping (through religion) from a morally neutral economic system or are in constant rebellion against it (through politics and the courts). That's not a bad description of the way we live now: a free, turbulent, morally bewildered democracy. This is infinitely preferable to a great many other political systems that are being hawked in the ideological marketplace. But I don't think it's good enough, because it is so inherently unstable and, ultimately, self-destructive.

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IDEAS AND PROPOSALS

Reassuring the small homeowner

ADAM YARMOLINSKY

It is now widely acknowledged that those who express a concern about law and order may either be employing "code words" to convey their hostility to blacks (or to social change), or they may be genuinely worried about being mugged when they go out at night, or coming home to find their houses burgled. Nor are these two concerns mutually exclusive—although they are often mutually re-enforcing. *Prima facie*, a good reason makes a better rationalization than a poor reason.

Similarly, those who express a concern about the effect of housing integration on the value of their investment in their homes may only be rationalizing a fear of black neighbors, or they may be genuinely concerned about what residential integration might do to their largest investment—often the only significant repository of their life savings. Some 40 million American families own their own homes, and these homes, amounting to 62 per cent of all occupied dwelling units, have a median value of $16,500. That the dangers these people are worrying about are largely unreal—except in short-run block-busting situations—doesn't make their worries any less real to themselves and to their friends and acquaintances. If this particular source of worry could be removed, white homeowners might conceivably become less resistant to mixed housing in their neighborhoods—mixed housing appears not unrelated to equal educational and job opportunity for blacks. Even where economic concerns are pure rationalization by white racists there is something to be said for calling their bluff. There is also something to be said for removing the commercial incentives that lead block-busting real estate operators to seek rapid turnover in an atmosphere of panic and hate in order to siphon off very large profits.

In a changing neighborhood, the homeowner's equity in his home could be protected by a simple and quite inexpensive public insurance scheme, operating either nationally, or, at least on an experimental basis, at the state or even the local level. The insurance would be available to homeowners in designated areas, and would reimburse the homeowner for any loss in his investment on selling his home, for any reason except physical deterioration or damage to the home itself. If, after offering his home for sale for a reasonable period at the insured price, the homeowner did not find a buyer, he could sell it at the market and collect the difference from the in-

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surer, or the insurer might take it off his hands for resale and pay him the insured price.

If such insurance were available at a reasonable price, the very fact of its availability should go a long way to discourage even the temporary depression of property values that may accompany rapid change in neighborhood racial character—and consequently the cost of the scheme itself would be held down. An additional benefit of the insurance scheme is that it would remove a major obstacle to geographic mobility of the labor force. Business enterprises recognize this benefit when, as in a number of major corporations, a key executive about to be transferred may sell his home to the company at appraised value, and the company will then undertake to resell it. Because the company's investment is miniscule, it can afford to wait for a buyer and is unlikely to lose more than its administrative costs on the transaction. When workers are more willing to move with their jobs or with geographic shifts in the availability of new jobs, the economy can grow more rapidly and adjust more easily to cutbacks, thus mitigating another factor that might depress housing values.

FOUR kinds of problems in working out such an insurance scheme need to be examined: how to measure the homeowner's equity interest, how to determine the geographical scope of coverage, how to secure an adequate range of risks, and how to administer and pay for the scheme. None of these problems is particularly difficult, but they all need to be thought through in advance.

A homeowner's equity in his home normally consists of two parts: the balance due on his mortgage,[1] if any, and the accumulated value above the mortgage that results from periodic repayments of mortgage capital, new investment in the home (enclosing a porch, adding a bathroom) and general increases in property values. The simplest measure of the homeowner's total equity interest would be market value of the house at the time the insurance enters into force, as determined by independent appraisers. A more conservative measure, but still minimally satisfactory, would be to take the lower of two values: the market value, or the sum of the balance due on the mortgage and the amount the homeowner has actually invested in his home. This latter formula would save some money and some arguments—although it would create others about whether a particular expenditure was a capital improvement, or mere maintenance. It would also result in some unfairness for persons who had owned their homes for a long time and who were counting on the appreciation in value in calculating their retirement finances. The insurance would presumably be available only for owner-occupied homes, but it probably would have to extend to two- and three-family units where the owner occupied one unit himself.

Collusive sales at artificially low prices—with a tacit understanding in the community not to overbid—would present a special prob-

[1] The balance on the mortgage is separated out because it is normally a direct personal obligation of the homeowner as well as a charge on the property.

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lem for this insurance scheme. One of the factors discouraging collusive sales would be the fact that real estate agents could earn commissions only on the actual amount of the sales price, and not on the increment supplied by insurance.

A more difficult problem is how to deal with homes allowed to deteriorate through abuse and lack of maintenance, either in anticipation of being bailed out by homeowners equity insurance, or simply because the entire neighborhood is deteriorating. The existence of an equity insurance policy on a home would tend to act as a disincentive to regular upkeep and repairs.

There are at least three lines of defense against this tendency: first, because the scheme would be limited to owner-occupied homes, house-pride would work against letting things go. Second, because the insurer would have the threat of cancellation or suspension of of the policy, inspection of maintenance should be a reasonably effective device, even on a sampling basis. Third, and perhaps most important, because the insurer would have a direct interest in preventing or combatting deterioration, this interest can be invoked against the forces in the community and in the economy that tend to spread deterioration. One of the most beneficial side effects of the scheme would be to help identify and dramatize those situations in which individual home owner initiative can not prevent deterioration, and where the tools available to public authority have not been employed, or are still inadequate to stop advancing blight. If home improvement loans are not available to homeowners in a particular neighborhood, or if abandoned buildings are infecting whole blocks with decay, or if municipal garbage service or street sweeping is inadequate to keep the area reasonably clean and rat-free, these will be matters of real concern to the insuring agency. Nor would these difficulties be limited to neighborhoods within the ghetto or below the poverty line; to the extent that they appeared in white, lower-middle-class neighborhoods, the concern of the insuring agency would help to assure white, lower-middle-class homeowners that they were getting their share of public attention.

How to decide where the insurance should be available presents the second set of problems. The question assumes that, for reasons of cost and initial impact, the scheme should not be launched with complete national coverage, or rather that whatever federal support is made available should, at least initially, have some geographical limitations. A relatively simple and objective standard for neighborhood eligibility would be a significant increase in residential real estate turnovers. "Significant" would still have to be defined in appropriate regulations, as would "neighborhood." Administrative determinations as to eligibility and coverage would need to be made reviewable, with insurance available retroactively in the event of a reversal of an administrative exclusion.

It might be argued that making the insurance available in changing neighborhoods would signal the very fact that the neighborhood was "turning" and could perhaps accelerate the process. Even if this

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were so, the insurance would accomplish a social purpose, at minimal cost, by permitting changes of ownership to take place without leaving both buyer and seller angry because the one had sold cheap and the other had bought dear to the benefit only of the block-busting real estate man. It may be that, at this stage in our society, equal housing opportunity for blacks can be had only if whole blocks or neighborhoods go all black. In that case it clearly is preferable that the change be accomplished without imposing economic losses on white sellers and black buyers that can only create resentments on both sides. But it is also possible that, after the first rush of departures from a changing neighborhood, those whites who would have no other cause to move would decide to stay, because they would know that their investments in their houses were not threatened, and the neighborhood might retain a genuinely mixed character. In any event, an unnecessary irritant to the process of change would be removed.

If insurance were made available only in areas impacted by residential real estate turnover, the problem of securing an adequate range of risks would be less severe than if any homeowner anywhere in the country could take out a policy. Within impacted areas there would likely be more general acceptance of the usefulness of the insurance, while elsewhere it might be bought disproportionately by persons who had special reasons to expect that the value of their individual property would decline.

STILL it would be desirable, if not essential, to take additional steps to spread the risk across a wider range of insureds. Just how desirable this would be would depend upon how the insurance would be paid for and who would administer it.

The cost of such an insurance program should be minimal—not much more than the costs of administration—because the risks against which it would insure, however real they may seem to the homeowners involved, are almost entirely illusory. The existence of the insurance program would itself remove most of the residual risk by removing the fear that can lead to panic selling.

Dependable cost estimates would have to be based on market surveys, but it seems reasonable to suppose that costs could be covered by modest premiums that would be attractive even to the low-income homeowner—particularly if cost would be proportionate to insured value. At the same time there would be positive advantages in not making the insurance a federal handout.

If the insurance is not to be a handout, its purchase can be made a condition of other federal largesse—FHA-insured mortgages or home improvement loans, or Sec. 236 homeownership subsidies. Even if this requirement were limited to new transactions in impacted areas, as it might have to be, it would help to spread the risk somewhat more broadly. If additional spreading were desired, it might be achieved by making a certain minimum percentage coverage a condition on certain kinds of federal assistance to communities—e.g., urban renewal, model cities, and community facilities

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grants. Where public or other low- or middle-income housing projects were to be undertaken, a similar coverage could be required. The usefulness of this kind of coverage to ease the entry of new housing projects into suburban areas is apparent. It should be particularly relevant to the operations of agencies like the New York State Urban Development Corporation and the new Massachusetts Housing and Finance Agency.

In order to make an insurance scheme of these dimensions and this degree of novelty attractive to the insurance industry, individuals' policies issued by commercial insurance companies would presumably have to be reinsured by the federal government, or, in pilot programs, by state or local entities, perhaps using existing federal program funds to back up their guarantee. By providing this reinsurance (in similar fashion to FHA mortgage insurance), government would be making the insurance available at reasonable rates. It would thereby be providing a service to homeowners that would not otherwise be available. And it would also acquire leverage to control insurance rates and conditions, and to guarantee equal access to this new form of protection.

The reinsurance and policing function could well be performed by the FHA, which has more than adequate experience in this general field. By not charging for its services, or by charging only the marginal costs, the FHA, or whatever federal agency played this role, could also contribute to the administrative costs of the scheme, while taking advantage of economies of scale within the federal structure. At the same time, it would be opening up new business opportunities for the insurance and home financing industry.

Initially, an experimental insurance scheme might be tried out in an impacted area, with a limited population, in which the administrative costs (above a modest or even nominal premium) might be covered by local government or foundation support, or through special contributions from the insurance industry, and the risk would be reinsured by the local government entity, perhaps in terms of a contingent agreement to purchase housing, where an owner wishing to sell could not realize his equity. One example of this kind of program is already in operation under the Department of Defense Homeowners Assistance Program (P.L. 89-754, Sec. 1013, passed in November, 1966) which guarantees up to 90-95 per cent of the homeownership equity for Department of Defense civilian employees whose equities are adversely affected by base closings.

We have been forcibly reminded of late that the sector of American society of which the small homeowner is a highly visible specimen is asking its legislative representatives, with some asperity: What have you done for us lately? A scheme that employs the credit of the federal government to protect the largest single asset that most Americans have against a little-understood and proportionately-much feared danger of its dissipation, disorder and violence might help reassure these people, and might even begin to knit up the ravelled fabric of the Union.

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CURRENT READING

Porno in Denmark

In this issue, Stanley Kauffmann and James Q. Wilson allude to reports that, after Denmark abolished all restrictions on pornography over a year ago, the number of reported sex crimes (and even the size of audiences in night clubs) declined, thereby "proving" the benign social consequences of thorough-going libertarianism. Well, what the Danish experience proves isn't so clear, as this report in the English-language edition of *Le Monde*, August 19, 1970, suggests:

> COPENHAGEN—A year ago, on the recommendation of the conservative Justice Minister Knud Thestrub, the Danish parliament abolished all censorship of films, photographs and printed matter. The decision caused a considerable stir. Thousands of amazed, eager or cynical eyes were turned on Denmark, land of the guileless Hans Christian Andersen and the romantic Hamlet.
>
> It is still too soon to draw firm conclusions about the experiment, but some tentative ones are perfectly possible. . . .
>
> In the view of the official spokesmen and advocates, the results of this unprecedented revolution are highly positive. "Remember," they tell non-Scandinavians in a faintly condescending tone, "Denmark was able to abolish censorship because Danes are really not interested in pornography, and never have been." Both officials and many ordinary citizens insist that a pornographic trade was able to flourish after July 1969 only because of foreigners' low tastes.
>
> These same pro-abolitionists also maintain, however, that sex crimes in Denmark dropped off even before abolition when the government began to relax censorship. So evidently there was a domestic market too. In any event, a recent public opinion survey reported that 57 per cent of the Danes are satisfied with the situation as it is.
>
> But there are plenty of skeptics. How is it, they ask, that in outlying districts of Copenhagen—where tourists never venture—automatic vending machines for pornographic literature do such a brisk business? And how explain the sudden rise of a Danish-language daily newspaper that has broken all circulation records since it started running oddly-worded classified advertisements and articles, photographs and drawings in very dubious taste?

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As for statistics, they may not bear closer examination either. There has indeed been a drop in less serious sex crimes such as exhibitionism, but rape and sadistic offenses continue on the same scale. . . .

The pro-abolitionists have also pointed at the thinning attendance at Copenhagen's nightclubs, but this could well be due to Denmark's current economic recession. Race courses and travel agencies have been losing business too. Faced with heavy taxes and a rising cost of living, many Danes have been forced to fall back on cheaper sources of amusement, and membership and table charges in the clubs are quite high. Pornographic magazines and 8- and 16-millimeter films, on the other hand, are still selling well.

Lately, the Society for the Prevention of Cruelty to Animals petitioned the courts to prohibit the use of four-footed animals in live or filmed sex scenes with humans. A young Danish woman has made a name for herself and a great deal of money appearing with stallions and dogs.

Nor is she the only one profiting from the pornographic revolution. Impresarios who vie with one another to bring out the crudest shows have no trouble finding actors and models in every sector of the population. Recently an army career officer and a post office worker were nearly dismissed for holding down second jobs in the pornographic industry. They had naively imagined they were posing for the export market.

Porno in New York

At Club Orgy, Rita and Victor perform sexual intercourse twice daily to a grim but attentive audience. . . .

In addition to a live fuck show, Club Orgy offers some satellite sex. Adjoining the theatre is a medium-sized "spread" bookstore, filled with raunch. (The price of admission to Club Orgy is $6; when the show is over you get a free $3.50 book.) There is a string of rooms for "modeling." And there is talk of a new building, a sex restaurant, and a more elegant ambiance. Recently, in fact, Club O went legit, and its various couplings were craftily incorporated into a "play" that some poor fool thinks will dupe the authorities.

But Rita and Victor are still the Fonteyn and Nureyev of public sex, at least at Club O. The stage of the theatre is occupied by a large bed, which Victor thoughtfully makes before each show. The lights come up on Rita, negligeed, reading some porn, and cooing for her husband. Victor returns home from work—"it's not just intercourse," he explained, "we have a lot of lines"—and the two begin 20 minutes of inventive and gymnastic sex." . . . The show ends a bit abruptly when all the theatre lights start flashing, and Rita and Victor uncouple like an electric train. . . .

Outside, I take the congressman's tour of Times Square. Between 42nd Street and 48th Street I count 23 stores selling "Backdate Magazines" and "Books of all Publishers." At most of the newsstands there is a three-deep display of meat. Dirty movie houses are sprouting on every block, with $5 admission not uncommon. There's a variety of strip-tease burlesque, from Ann Corio family nostalgia to acts of rather astonishing lewdness. And if the spiritual home of raunch is still Times

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Square, geographically it is beginning to ooze up all over Manhattan. Tepid 95-cent paperbacks are being replaced by racks of $1.95 and $2.95 books. On the Upper West Side, little men on the streets are peddling armfuls of Screw and Kiss and Pleasure and Ball. In Greenwich Village, a number of gay bars have begun to offer pornography plus. At Christopher's End, one of the tamer bars, two nude men on a little platform are go-go dancing vigorously to the Chambers Brothers and projected muscle slides. In a pitch black room beside the bar, glowing cigarettes indicate the presence of several dozen bodies, gliding past one another toward darker corners and anonymous sex. NYU Film School is preparing its first official dirty movie, under the tutelage of Betty Dodson, an erotic artist. Sarah Lawrence College recently hosted an experimental sex education weekend that featured three days of blue movies and hard-core beaver anatomy. A nude sex play just opened whose locale is *Queens*.

Jonathan Black, *The Village Voice*, November 26, 1970.

Changing Symbols of American Industry

"Symbols change all the time. A few decades ago, when the United States was a good bit less prosperous than it is now, the industrial smokestack was a sign of progress. A man painting a picture for a calendar always put in a nice, solid plume of black smoke to show everybody that the plant was running full tilt. We have an auditorium at our headquarters [at Du Pont] that was decorated in 1942, and it has a montage alongside the stage with one of those smokestacks on it. The next time we redecorate we'll have to do something about the smoke; we're getting comments from our visitors."

C. B. McCoy, President of Du Pont, in a speech June 4, 1970

Our Affluent Barbarians

As bizarre as it may seem, some 10,000 Americans collect specimens of old barbed wire. These collectors, who call themselves "barbarians," have a dozen state-wide barbed wire associations and an international group. They publish two newspapers and have annual conventions which draw hundreds of serious collectors and thousands of novices. Half meter strands of particularly rare wire have been known to sell for as much as $140.

At least two books have been written on the subject, including one authored by a man named Jesse James who points out the fact that some 600 varieties of barbed wire—called "devil's rope"—had been patented by the late 1800's. Collectors go to great lengths to add to their collections. A physician in Texas hunts for rare specimens across the plains by helicopter. One collector snatched a prized piece from an unusually tough crow, which had fashioned a 72-pound nest made almost entirely of barbed wire.

When questioned about their reasons for collecting wire, the collectors cited its relationship to Americana—one man states that wire collecting "smacks of the old West . . . Four things won the West—

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the Colt revolver, the windmill, the Winchester rifle and barbed wire. That's a part of our history that has been overlooked until now. . . ." A lawyer with a large collection states that rising value of barbed wire makes it all the more desirable to collect. "There's a mystery to it," he states, "you never know when the wire you find will turn out to be worth $32.

Wall Street Journal, September 30, 1969

Universities in China: The Reform of the Intellectuals

On May 25, 1966 the Cultural Revolution began when a wall newspaper posted in Peking University called for reform of the universities. In June 1966, the Party's Central Committee ordered all student enrollment halted and suspended university teaching. The students poured into the Red Guards and opened an attack against all the old authorities, except the Maoist cadres. For almost two years, the universities were shut down until July 1968 when the universities were turned over to "workers' committees" who assumed control of administration. Since then the entire university system—curriculum, textbooks, class background of students—has been overhauled. Now courses in China's technical and scientific institutions are being resumed. What the new system is like is described by Alain Bouc in *Le Monde* (English-language edition) of October 7, 1970.

After four years of debate, agreement has finally been reached on the principles of scientific and technical training. From 1967, students, teachers, the Party, the army, workers and industrial management personnel have all been involved in a series of experiments aimed at working out new revolutionary forms of teaching incorporating all the practical lessons of the Cultural Revolution. . . .

The extensive reforms now being put into effect are intended to reintegrate within Chinese society the university, which for centuries had been isolated as a result of mandarin and aristocratic influences. The purpose, say the Chinese, is to "destroy the traditional preserve of a bourgeoise," which in spite of all its efforts the regime has so far not succeeded in eliminating.

The old-style "intellectual" may soon become a museum piece. This was the class which used to be reminded by former Chinese leaders that the future of the nation lay in its hands, that intellectuals should behave like intellectuals, taking all the time they needed to think things out. . . .

The bulk of the science students for the universities will be recruited from among the workers, reinforced by a sprinkling of administrators who have had a secondary school education. Good professional experience plus sound political training is considered an excellent basis for higher education. A worker who can fashion a spherical surface working only with a file, it is believed, will be able to grasp infinitesimal calculus handily, whereas anyone trying to learn it from a textbook alone will be completely lost.

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University courses have been cut to between two and four years approximately. Each university will run its own factory or farm in accordance with the instruction it provides, thus permitting its students to convert their knowledge into practical applications, learn new things, and divide their time between workshop, laboratory and lectureroom.

In the light of the proposed reforms, the hierarchical distinction between teacher and pupil will also be challenged. Teachers are human beings like their pupils; their knowledge should not be enshrouded in mystery. Rank should be abolished, as it has been in the army. Teachers and pupils should study political questions together, regenerate themselves morally, work in factory or field, and sing revolutionary songs together. . . .

New manuals are tested by workers for the clarity and accuracy of the instructions they provide. The authorities are determined that students who enter the universities from factories and farms should not have to put up with old books "which put a premium on theory and make a mystery out of everything."

The teams of workers are theoretically expected to remain part of the university indefinitely. They direct the political struggle, ensure coordination with the production sector, and undertake a certain amount of technical instruction. They are actual directors and not mere consultants.

But this does not mean that intellectuals have been excluded from the education system. Former faculty members still form the nucleus of the teaching body, until the time comes for the new teachers turned out by the new "crash" program to replace them. Until then the workers must be patient with them. They have been told that even if some of the old professors refuse to be reeducated and insist on sticking to the old ways, there is no point in getting angry. The class struggle is a long one, the party points out, and there are always the obdurate. . . .

No Speeka de Language

The study of a foreign language, once considered a prerequisite for a liberal education, has increasingly come under attack in colleges and universities.

Requirements for a foreign language have been challenged by new educational theories opposing requirements of any sort, by students who feel that Americans learn foreign languages in order to extend the country's influence in the world, and by faculty members—especially in the social sciences—who feel that foreign languages are not crucial for their students.

The apparent decline in the popularity of foreign languages and the prospect of dwindling enrollments have caused increasing concern and division among members of foreign language departments.

Unless the teaching of languages is improved, and students can be prevailed upon to study them, says a department chairman at a state university, "our essentially monolingual country is going to forget

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rapidly the pitiful smattering of foreign tongues which it has learned since Sputnik."

There have been no national studies of the extent to which colleges and universities have abandoned language requirements, but the available statistics have pointed to a decline in their use.

The Modern Language Association, which is preparing a major survey, has found in a smaller study that 102 of 235 institutions have abolished or reduced their requirements, or have expanded the options available to students.

In another study, Douglas W. Alden, chairman of the department of Romance languages at the University of Virginia, has found that at 53 of 88 institutions, "the language requirement has been eliminated or watered down, was under immediate consideration for elimination or watering down, or was under threat." . . .

Where the issue has been debated, it has provoked bitter divisions among faculties.

"In my view, no academic issue so polarizes a faculty or evokes so much irrational argument as does this one," comments an associate dean to a major public university where the requirements have been modified to provide students with more options.

Criticism of the requirements has come from faculty members, especially those in the social sciences, who feel that knowing a foreign language is not an essential skill for proficiency in their discipline, and from those who feel that, while knowing a language is important, the requirements tend to hinder students in acquiring knowledge. . . .

"A decade or more of language requirements has not significantly improved language instruction," says a faculty member at Brown University. "Hopefully, the fact that language requirements are being done away with all over the country will have the opposite effect."

The Chronicle of Higher Education, Nov. 17, 1970.

Pollution in the U.S.S.R.

Environmental pollution in the United States frequently arises from the abuse of private property. And in the Soviet Union? There, it seems, environmental pollution frequently arises from the abuse of "socialist" property. A recent article in *Science* (October 2, 1970), by Marshall I. Goldman, indicates that socio-economic forms are, all of them, pollutable.

> Comparing pollution in the United States and in the U.S.S.R. is something like a game. Any depressing story that can be told about an incident in the United States can be matched by a horror story from the U.S.S.R. . . . There is not one river in the Ukraine whose natural state has been preserved. The Molognaia River in the Ukraine and many other rivers throughout the country are officially reported as dead. How dangerous this can be is illustrated by what happened in Sverdlovsk in 1965. A careless smoker threw his cigarette into the Iset River and, like the Cuyahoga in Cleveland, the Iset caught fire. . . .
>
> The Soviet Union . . . has had trouble not only with its rivers but with

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its larger bodies of water. As on Cape Cod and along the California coast, oil from slicks has coated the shores of the Baltic, Black, and Caspian seas. Refineries and tankers have been especially lax in their choice of oil-disposal procedures.

Occasionally it is not only the quality but the quantity of the water that causes concern. The Aral and Caspian seas have been gradually disappearing. Because both seas are in arid regions, large quantities of their water have been diverted for crop irrigation. Moreover, many dams and reservoirs have been built on the rivers that supply both seas for the generation of electric power. As a result of such activities, the Aral Sea began to disappear. From 1961 to 1969 its surface dropped 1 to 3 meters. Since the average depth of the sea is only about 20 to 30 meters, some Russian authorities fear that, at the current rate of shrinkage, by the turn of the century the sea will be nothing but a salt marsh.

Similarly, during the past 20 years the level of the Caspian Sea has fallen almost 2½ meters. This has drastically affected the sea's fish population. Many of the best spawning areas have turned into dry land. For the sturgeon, one of the most important fish in the Caspian, this has meant the elimination of one-third of the spawning area. The combined effect of the oil on the sea and the smaller spawning area reduced the fish catch in the Caspian from 1,180,400 centners in 1942 to 586,300 centners in 1966. . . . The output of caviar has fallen even more drastically than the sea level. . . .

* * *

Perhaps the best known example of the misuse of water resources in the U.S.S.R. has been what happened to Lake Baikal. This magnificent lake is estimated to be over 20 million years old. There are over 1200 species of living organisms in the lake, including freshwater seals and 700 other organisms that are found in few or no other places in the world. It is one of the largest and deepest freshwater lakes on earth, over 1½ kilometers deep in some areas. It is five times as deep as Lake Superior and contains twice the volume of water. In fact, Lake Baikal holds almost one-fortieth of all the world's fresh water. The water is low in salt content and is highly transparent; one can see as far as 36 meters under water.

In 1966, first one and then another paper and pulp mill appeared on Lake Baikal's shores. Immediately limnologists and conservationists protested this assault on an international treasure. Nonetheless, new homes were built in the vicinity of the paper and pulp mills, and the plant at the nearby town of Baikalsk began to dump 60 million cubic meters of effluent a year into the lake. A specially designed treatment plant had been erected in the hope that it would maintain the purity of the lake. Given the unique quality of the water, however, it soon became apparent that almost no treatment plant would be good enough. Even though the processed water is drinkable, it still has a yellowish tinge and a barely perceptible odor. As might be expected, a few months after this effluent had been discharged into the lake, the Limnological Institute reported that animal and plant life had decreased

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by one-third to one-half in the zone where the sewage was being discharged.

Several limnologists have argued that the only effective way to prevent the mill's effluent from damaging the lake is to keep it out of the lake entirely. They suggest that this can be done if a 67-kilometer sewage conduit is built over the mountains to the Irkut River, which does not flow into the lake. So far the Ministry of Paper and Pulp Industries has strongly opposed this, since it would cost close to $40 million to build such a bypass. They argue that they have already spent a large sum on preventing pollution. Part of their lack of enthusiasm for any further change may also be explained by the fact that they have only had to pay fines of $55 for each violation. It has been cheaper to pay the fines than to worry about a substantial cleanup operation.

Amid continuing complaints, the second paper and pulp mill, at Kamensk, was told that it must build and test its treatment plant before production of paper and pulp would be allowed. Moreover, the lake and its entire drainage basin have been declared a "protected zone," which means that in the future all timber cutting and plant operations are to be strictly regulated. Many critics, however, doubt the effectiveness of such orders. As far back as 1960, similar regulations were issued for Lake Baikal and its timber, without much result. In addition, the Ministry of Pulp and Paper Industries has plans for constructing yet more paper and pulp mills along the shores of Lake Baikal and is lobbying for funds to build them.

Many ecologists fear that, even if no more paper mills are built, the damage may already have been done. The construction of the mills and towns necessitated the cutting of trees near the shoreline, which inevitably increased the flow of silt into the lake and its feeder streams. Furthermore, instead of being shipped by rail, as was originally promised, the logs are rafted on the water to the mill for processing. Unfortunately about 10 per cent of these logs sink to the lake bottom in transit. Not only does this cut off the feeding and breeding grounds on the bottom of the lake but the logs consume the lake's oxygen, which again reduces its purity.

There are those who see even more dire consequences from the exploitation of the timber around the lake. The Gobi Desert is just over the border in Mongolia. The cutting of the trees and the intrusion of machinery into the wooded areas has destroyed an important soil stabilizer. Many scientists report that the dunes have already started to move, and some fear that the Gobi Desert will sweep into Siberia and destroy the taiga and the lake.

* * *

One particularly poignant instance of air pollution is occurring outside the historic city of Tula. Not far away is the site of Leo Tolstoy's former summer estate, Yasnaya Polyana, now an internationally known tourist attraction with lovely grounds and a museum. Due to some inexcusable oversight, a small coal-gasification plant was built within view of Yasnaya Polyana in 1955. In 1960 the plant was expanded as it began to produce fertilizer and other chemicals. Now known as the

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Shchkino Chemical Complex, the plant has over 6,000 employees and produces a whole range of chemicals, including formaldehyde and synthetic fibers. Unfortunately the prevailing winds from this extensive complex blow across the street onto the magnificent forests at Yasnaya Polyana. As a result, a prime oak forest is reported near extinction and a pine forest is similarly affected.

* * *

As in other nations of the world, environmental disruption in the U.S.S.R. is not limited to air and water. For example, the Black Sea coast in the Soviet Republic of Georgia is disappearing. Since this is a particularly desirable resort area, a good deal of concern has been expressed over what is happening. At some places the sea has moved as much as 40 meters inland. Near the resort area of Adler, hospitals, resort hotels, and (of all things) the beach sanitarium of the Ministry of Defense collapsed as the shoreline gave way. Particular fears that the mainline railway will also be washed away shortly have been expressed.

New Yorkers who vacation on Fire Island have had comparable difficulties, but the cause of the erosion in the U.S.S.R. is unique. Excessive construction has loosened the soil (as at Fire Island) and accelerated the process of erosion. But, in addition, much of the Black Sea area has been simply hauled away by contractors. One contractor realized that the pebbles and sand on the riviera-type beach were a cheap source of gravel. Soon many contractors were taking advantage of nature's blessings. As a result, as much as 120,000 cubic meters a year of beach material has been hauled away. Unfortunately the natural process by which those pebbles are replaced was disrupted when the state came along and built a network of dams and reservoirs on the stream feeding into the sea. This provided a source of power and water but it stopped the natural flow of pebbles and sand to the seacoast. Without the pebbles, there is little to cushion the enormous power of the waves as they crash against the coast and erode the shoreline.

* * *

Despite the fact that our economies differ, many if not all of the usual economic explanations for pollution in the non-Communist world also hold for the Soviet Union. The Russians, too, have been unable to adjust their accounting system so that each enterprise pays not only its direct costs of production for labor, raw materials, and equipment but also its social costs of production arising from such by-products as dirty air and water. . . .

In addition . . . , there are some reasons for polluting which seem to be peculiar to a socialist country such as the Soviet Union in its present state of economic development. First of all, state officials in the Soviet Union are judged almost entirely by how much they are able to increase their region's economic growth. . . . There is almost a political as well as an economic imperative to devour idle resources. The limnologists at Lake Baikal fear no one so much as the voracious Gosplan (State Planning) officials and their allies in the regional gov-

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ernment offices. These officials do not have to face a voting constituency which might reflect the conservation point of view, such as the League of Women Voters or the Sierra Club in this country. It is true that there are outspoken conservationists in the U.S.S.R. who are often supported by the Soviet press, but for the most part they do not have a vote. . . .

It is as hard for the Russians as it is for us to include social costs in factory-pricing calculations. However, not only do they have to worry about social cost accounting, they also are unable to reflect all the private cost considerations. Because there is no private ownership of land, there are no private property owners to protest the abuse of various resources. Occasionally it does happen that a private property owner in the United States calculates that his private benefits from selling his land for use in some new disruptive use is *not* greater than the private cost he would bear as a result of not being able to use the land any more. So he retains the land as it is. The lack of such private property holders or resort owners and of such a calculation seems to be the major reason why erosion is destroying the Black Sea coast. There is no one who can lay claim to the pebbles on the shore front, and so they are free to anyone who wants to cart them away. . . .

Madison Avenue: On the Left Side of the Street

Manipulation is a horrid word, except, of course, when it is done for a good purpose. That, at least, must be the feelings of two social psychologists who have written a manual for college students on how to win friends and influence voters. The following account is from the newsletter *Behavior Today,* a "human sciences newsletter," Kiplinger style. The emphases are in the original:

Social psychologists Robert Abelson of Yale and Philip Zimbardo of Stanford have pooled their expertise on public opinion and voting behavior in *a new political primer for student volunteers* who will be working for peace candidates in the fall elections. The breezy, step-by-step guide tells canvassers exactly what to do and the psychological reasons for doing it. It tells doorbell ringers *how to look, how to act and what to say* in almost any situation. It tells how to size up the interviewee—"hawk, dove or mixed bird"—and what strategy to follow from there. It also gives tips on *when to play down the peace issue* and discuss other topics, how to elicit a behavioral commitment from the interviewee, how to deal with a "dovish" wife who may be influenced by a "hawkish" husband and how to leave a hostile interviewee less hostile. *Says Abelson: "We are after results."* The Society for the Psychological Study of Social Issues (P.O. Box 1248, Ann Arbor, Mich. 48106) is distributing the manual, *Canvassing for Peace,* at $1.50 a copy.

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